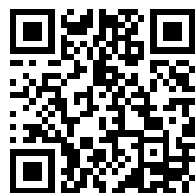

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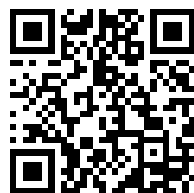
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**PATRIMOINE
de l'UNIVERSITÉ
de GAND**

**RERUM BRITANNICARUM MEDII ÆVI
SCRIPTORES,**

OR

**CHRONICLES AND MEMORIALS OF GREAT BRITAIN
AND IRELAND**

DURING

THE MIDDLE AGES.



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THE CHRONICLES AND MEMORIALS
OF
GREAT BRITAIN AND IRELAND
DURING THE MIDDLE AGES.

PUBLISHED BY THE AUTHORITY OF HER MAJESTY'S TREASURY, UNDER
THE DIRECTION OF THE MASTER OF THE ROLLS.

On the 26th of January 1857, the Master of the Rolls submitted to the Treasury a proposal for the publication of materials for the History of this Country from the Invasion of the Romans to the reign of Henry VIII.

The Master of the Rolls suggested that these materials should be selected for publication under competent editors without reference to periodical or chronological arrangement, without mutilation or abridgment, preference being given, in the first instance, to such materials as were most scarce and valuable.

He proposed that each chronicle or historical document to be edited should be treated in the same way as if the editor were engaged on an *Editio Princeps*; and for this purpose the most correct text should be formed from an accurate collation of the best MSS.

To render the work more generally useful, the Master of the Rolls suggested that the editor should give an account of the MSS. employed by him, of their age and their peculiarities; that he should add to the work a brief account of the life and times of the author, and any remarks necessary to explain the chronology; but no other note or comment was to be allowed, except what might be necessary to establish the correctness of the text.



The works to be published in octavo, separately, as they were finished; the whole responsibility of the task resting upon the editors, who were to be chosen by the Master of the Rolls with the sanction of the Treasury.

The Lords of Her Majesty's Treasury, after a careful consideration of the subject, expressed their opinion in a Treasury Minute, dated February 9, 1857, that the plan recommended by the Master of the Rolls "was well calculated for the accomplishment of this important national object, in an effectual and satisfactory manner, within a reasonable time, and provided proper attention be paid to economy, in making the detailed arrangements, without unnecessary expense."

They expressed their approbation of the proposal that each Chronicle and historical document should be edited in such a manner as to represent with all possible correctness the text of each writer, derived from a collation of the best MSS., and that no notes should be added, except such as were illustrative of the various readings. They suggested, however, that the preface to each work should contain, in addition to the particulars proposed by the Master of the Rolls, a biographical account of the author, so far as authentic materials existed for that purpose, and an estimate of his historical credibility and value.

*Rolls House,
December 1857.*

639^b

UNIVERSITY
OF CAMBRIDGE

HENRICI DE BRACTON
DE
LEGIBUS ET CONSUETUDINIBUS
ANGLIÆ.
LIBRI QUINQUE

IN VARIOS TRACTATUS DISTINCTI.

**AD DIVERSORUM ET VETUSTISSIMORUM CODICUM
COLLATIONEM TYPIS VULGATI.**



EDITED

BY

SIR TRAVERS TWISS, Q.C., D.C.L.

**PUBLISHED BY THE AUTHORITY OF THE LORDS COMMISSIONERS OF HER MAJESTY'S
TREASURY, UNDER THE DIRECTION OF THE MASTER OF THE ROLLS.**

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CONTENTS.

	Page
INTRODUCTION - - - - -	vii
TABLE OF CONTENTS OF CHAPTERS - -	xc
OF ACQUIRING THE DOMINION OF THINGS, BOOK II., CHAPTER XXXVII. - - - - -	3
OF ACTIONS—BOOK III.—TREATISE I. - -	103
OF THE CROWN—BOOK III.—TREATISE II. -	235
ARTICLES OF THE EYRE—2 EDWARD I.—APPENDIX I. -	585
ARTICLES OF THE EYRE—3 EDWARD I.—APPENDIX II. - - - - -	597
PLEA-ROLL, 18 HENRY III.—APPENDIX III. -	606
INDEX - - - - -	615

INTRODUCTION.



INTRODUCTION.

SINCE the publication of the first volume of the present work, the Editor has been successful in discovering certain new sources of information as to the ecclesiastical offices and dignities held by Henricus de Bracton, which do not appear to have been known to those who have hitherto treated of his life and writings. This discovery is not merely decisive of the question as to Bracton having been an ecclesiastic, but it also throws considerable light upon a subject hitherto involved in complete obscurity, namely, the time of his death. Mr. Foss, in his *Lives of the Judges of England*, states that Henry de Bracton held the office of Archdeacon of Barnstaple, and cites Le Neve as his authority. Dugdale, in his *Origines Judiciales*, had affirmed the same fact, and had carried the subject no further. There is preserved amongst the Harleian MSS. (No. 863) in the British Museum an ancient Latin Psalter, in a handwriting of the ninth century, on vellum, to which is prefixed a Latin kalendar in a handwriting of the thirteenth or fourteenth century. This Psalter appears to have been in use in Exeter Cathedral, and notices have been inserted in various pages of the kalendar, opposite to certain days of the respective months, of sums of money in immediate connection with the "obits" of certain persons, mostly dignitaries or men of consideration. These entries are in a cursive hand, more modern than the writing of the kalendar itself, and on the table of the month of October, near the bottom of the page, the words, "Ob. Henr. de Bratton xiii^d." have been written opposite the date of

" iiii. kalendas." It may be presumed, that these notices have reference to certain sums of money, which were distributable on the occasion of celebrating the "obits" of the respective benefactors, to whose names they are appended. Amongst a list of fifty-eight persons, whose benefactions are noted in this kalendar, there are only two others, besides Henricus de Bratton, who have made so liberal a provision as this twelvepenny dole, and they are both Bishops of Exeter, one of whom is entered as "Episcopus Walter," and is probably Bishop Walter Bronescombe. This prelate was preferred from the Archdeaconry of Surrey to the Episcopal See of Exeter in 1237, and he died in 1280. He was thus a contemporary of Henricus de Bratton, and would be in close official relations with him, when he was Archdeacon of Barnstaple. Unfortunately the kalendar is silent as to the years in which the several benefactors died, and the handwriting affords us no assistance, as it is much more recent than the institution of the "obits," to which the entries refer.

The notice of Bracton's "obit" in this kalendar, coupled with the fact that Bracton's Mass¹ was the earliest mass celebrated every day in Exeter Cathedral, induced the Editor to follow up the clue furnished by Dugdale's statement, that Henricus de Bracton held the office of Archdeacon of Barnstaple, as that office would bring him, whilst living, into immediate relations with the Dean and Chapter of Exeter Cathedral. The Editor has been enabled through the courteous co-operation of the present Dean of Exeter, the Very Reverend Dr. Boyd, to follow up this clue to results which seem to be conclusive, that Henricus de Bracton died in the autumn of 1268. The most ancient Register-book, which is preserved in the Archives of the Diocesan Registry at Exeter, is Bishop

¹ Further information from the Archives of the Dean and Chapter on the subject of Bracton's Mass and Bracton's Altar in Exeter Cathedral will be found in a later part of this Introduction, p. lxviii.

Bronescombe's Register, which commences A.D. 1237. There are twelve entries in this Register-book, in which mention is made of Henricus de Bratton or de Bracton. Amongst the earliest is the record of the preferment of Andreas Prous, vicar of Cheddeham, to an office in the church of Boseham in Surrey, at that time a peculiar of the Bishops of Exeter, which is stated to have been conferred upon him by the Bishop of Exeter, with the consent of Sir Henry de Bratton. The Bishop's act of collation is dated on "xv kalendas Marcii," in the fourth year of his Episcopate, which would correspond to the fifteenth day of February, 1241-42. In what precise character Sir Henry de Bratton was entitled to the patronage of the Sacristy of the Church of Boseham, the office in question, is not expressly stated in the Bishop's act of collation,¹ but there can be little doubt, from a subsequent entry in the same Register, that Sir Henry de Bratton was at that time a prebendary of Boseham, and a notice in the Liber Regis informs us, that there was at that time a College of Priests at Boseham, which consisted of five prebendaries, richly endowed. That Sir Henry de Bratton was one of these prebendaries, and that he had been appointed to his prebend prior to the advancement of Bishop Bronescombe himself to the see of Exeter may be presumed from the fact, that no entry is found in Bronescombe's Register of Bracton's collation to a prebend in Boseham Church, whereas there is mention, in 1268, of the Bishop having collated the Dean of Wells to the prebend, which had been vacated by Sir Henry de Bratton.

There is an entry in Bishop Bronescombe's Register of the appointment of Henricus de Bracton himself to an

¹ The entry in Bishop Bronescombe's Register is as follows:—
 "Anno die et loco eodem Dominus Episcopus contulit Andreas Prous, vicario de Cheddeham prebendam, quæ fuit Roberti Apthi(?)

"in Ecclesia de Boseham cum ejusdem ecclesiæ sacristaria, consensu domini Henrici de Bratton, ad quem ipsius sacristariæ collatio spectabat."

ecclesiastical office under the date of 21 January 1263, when it is recorded that "On the festival of St. Agnes, in the year 1263, the Lord Bishop at Horsley collated Sir Henry de Bracton to the Archdeaconry of Barnstaple."¹ This entry in the Bishop's Register so far confirms the statement of Dugdale. In the next following year there is an entry in the same Register of the appointment of Sir Henry de Bratton to the office of Chancellor of Exeter Cathedral. This event, which took place on the 18th May 1264, has been hitherto unknown to or has not been noticed by Bracton's biographers, notwithstanding that he resigned the Archdeaconry of Barnstaple on his new appointment. The entry in the Register is as follows: "In the same year (1264), and on the Lord's Day, the Vigil of St. Dunstan, Archbishop, that is, on the fifteenth of the kalends of June, the Lord Bishop conferred the Chancellorship of Exeter on Sir Henry de Bratton at Taunton."²

That Bracton resigned the Archdeaconry of Barnstaple, on his appointment to the chancellorship of the Cathedral, appears from another entry shortly following, which records the appointment of a successor to him in the archdeaconry on 25 May 1264: "In the same year (1264), and on the Lord's day following the feast of St. Dunstan, Archbishop, that is on the eighth day of the kalends of June, the Lord Bishop conferred the Archdeaconry of Barnstaple, vacant through the spontaneous resignation of Sir Henry de Bratton, on Sir Richard le Blund, and he had letters; and on the same day the prebend, which was that of the same Richard at Boseham, vacant by his spontaneous resignation, on Master Roger de Cory,

¹ Eodem anno et die Sancti Agnetis apud Horsley Dominus Episcopus contulit Archidiaconatum Barnstap. domino Henrico de Bracton.

² Eodem anno et die dominica in

vigilia Sancti Dunstani Archiepiscopi, hoc est, xv kalendas Junii, Dominus Episcopus contulit Cancellariatum Exoniæ domino Henrico de Bratton apud Tānton.

" and he had letters accordingly."¹ No further mention is made of Henricus de Bratton in Bronescombe's Register until 1268, when the registrar has recorded the appointment of a successor to him in his office of chancellor, and also of successors to him in his prebendal stalls, namely, that at Boseham in Surrey, already mentioned, and that of Exeter itself founded in the Cathedral. There is no entry to be found in Bishop Bronescombe's Register of Bratton's collation to the Exeter prebend, and the presumption in this case, as in the case of Boseham, is that Sir Henry de Bratton had been collated to it before 1237, when the entries in Bishop Bronescombe's Register commence.

The first of these new appointments occurs on the third day of the nones of September, which corresponds with the third day of the month of September according to the Gregorian kalendar. "In the same year, at the same place, and on the same day, the Lord Bishop conferred on Master Oliver de Tracy the Chancellorship of Exeter, with everything appertaining to it, and he had letters of induction, assignation, and institution in common form."² The place referred to in this entry, where the collation took place, appears from a preceding entry to have been Clist in Devonshire. Two other entries follow shortly afterwards, both having reference to preferment vacated by Henry de Bratton. The first is to this effect: "In the same year, and at Wallingford, on the second of

¹ Anno eodem die dominica proxima post festum Sancti Dunstani Archiepiscopi hoc est viii. kalendas Junii Dominus Episcopus contulit Archidiaconatum Barnstap., per spontaneam resignationem Domini Henrici de Bratton vacantem domino Ricardo dicto Blundo et habuit litteras, et eodem die prebendam, que fuit ejusdem Ricardi apud Boseham, per spontaneam

resignationem suam vacantem magistro Rogerio de Cory, et habuit litteras in forma communi.

² Anno loco, et die eodem Dominus Episcopus contulit magistro O. de Tracy Cancellariam Exoniensem cum omnibus ad eam pertinentibus, et habuit litteras inductionis, assignationis et institutionis in forma communi.



" the nones of November, the Lord Bishop conferred on Master Edward Delacron, Dean of Wells, the prebend, which was that of Henry de Bratton in the Church of Boseham."¹ The second entry, which immediately follows, is of similar import as regards Henry de Bratton: "In the same year, on the same day, and at the same place, the Lord Bishop conferred on Master R. de Esse the prebend, which was that of the aforesaid Henry in the Church of Exeter."² No mention is made in any of these entries of Bratton having vacated his preferment by voluntary resignation, as is mentioned in the instance of his advancement to the Chancellorship of the Cathedral, when he resigned the Archdeaconry of Barnstaple, and there is no known record of his having been advanced to any higher preferment about this time, which would have avoided his minor ecclesiastical dignities. Accordingly when we couple the striking fact that all the ecclesiastical preferments, which Bratton is known to have held, were vacated by him in the autumn of 1268 with another striking fact that his name ceases to be mentioned in any judicial record after the year 1267, whereas there is continual mention of him as acting in some high judicial capacity during a preceding period, extending from 1245 to 1267 inclusive, a presumption is raised of a very forcible character that he died in the year 1268.³ His decease in that year would account for

¹ Eodem anno et apud Wallingford ii. nonas Novembris Dominus Episcopus contulit magistro Edwardo Delacron, decano Wellensi, prebendam, que fuit Henrici de Bratton in Ecclesia Boseham.

² Anno, die, et loco eodem Dominus Episcopus contulit magistro, Ricardo de Esse, prebendam, que fuit predicti Henrici in Ecclesia Exoniensi.

³ The Editor has to thank Mr. Arthur Burch, the Deputy Registrar

of the diocese of Exeter, for transcripts of the various entries in Bishop Bronescombe's Register.

It deserves remark, that Henricus de Bratton has the title of "Dominus" prefixed to his name in most of these entries. "Dominus" was the title specially given to the Professors of Law in the University of Bologna under the privilege accorded to it by the Emperor Frederic I. at the Diet of Roncaglia, A.D. 1158.

all the above facts, and the entry of his "obit" in the Exeter kalendar in the month of October creates no difficulty in the way of our supposing, that his decease in August or previous thereto had created the vacancy in the chancellorship of Exeter, which was filled up by the collation of Oliver de Tracy on the third of September 1268.

The Editor has examined very carefully the list of "obits" entered in the Exeter kalendar, with a view to ascertain whether the "obit" of each benefactor is entered on the day of the month, on which it is known from other sources that the benefactor died. There are as many as nine bishops of Exeter, whose obits are noted in the kalendar, and in no single instance does the "obit" of a bishop coincide with the day of the month, on which he is elsewhere recorded to have died. The celebration, therefore, of Sir Henry de Bratton's obit on the 29th day of October would in no respect be inconsistent with the fact of his death having happened before the 3rd day of September, when Oliver de Tracy succeeded to the chancellorship. It may be further observed that the event of his death at that time would not invalidate the suggestion of Mr. Foss, that Henry de Bracton discharged the duties of Chief Justiciary in the interval which elapsed after the death of Hugh le Dispenser in 1265, and the appointment of Robert de Brus in 1268. But to this fact further reference will be made, when we come to treat of the various duties of the King's Justiciaries.

Passing onwards to a review of the contents of the present volume, which commences with Chapter XXXVII. of Bracton's treatise *De acquirendo Rerum dominio*, the Editor would observe, in the first place, that he has already stated in the Introduction to the first volume (p. xlvii) the reasons, which induced him to terminate the first volume with the chapter on homage and reliefs payable on succession to immoveable property. Between such subjects and the rights and duties of

guardians in respect of minors under their wardship there seemed to the Editor to be a sufficient diversity to warrant him in adopting Chapter XXXVII. as the commencement of the second volume, which should terminate with the treatise *De Corona*, the second and concluding treatise of Bracton's third book. The present volume will accordingly be found to comprise the four last chapters of the treatise *De acquirendo Rerum dominio*, which terminate the second book in the printed edition of 1569. These chapters are immediately followed by the treatise *De Actionibus*, which deals with the various kinds of actions and the various courts authorised to entertain them, and more particularly with the jurisdiction of the Justices Itinerant, which latter subject is extended into the two first chapters of the treatise *De Corona*. The remainder of this last treatise is devoted to the discussion of the rules of legal procedure in criminal matters, and is in fact a summary of the criminal law as administered by the Justices Itinerant in the reign of Henry III. The treatise *De Actionibus*, coupled with the treatise *De Corona*, constitute Bracton's third book in the printed edition of 1569. The notation of the folios of the printed book, which has been preserved on the margin of each page in the first volume, has also been preserved by the Editor throughout the present volume, so that there will be no difficulty in the way of the law student identifying any reference to Bracton's work, which he may meet with in ancient law treatises, or in the reports of cases adjudged at Westminster.

It would appear from Bracton's treatment of the rights incidental to the wardship of minors, with which Chapter XXXVII. opens, that the law, as laid down in Glanville's "*Tractatus de Legibus*," had undergone very little change since the reign of Henry II., further than what may be inferred from the silence of Glanville, as to any right of the guardian in cases of military tenure to sell

the maritage of the heir, which Bracton discusses (fol. 87) as a matter of ordinary practice in his time. In this respect an element of decay would seem to have insinuated itself into an important outwork of the feudal system. No part of that system in its original organisation had been so jealously guarded as the inheritance of the feud, and the right of testament in respect of immoveables was altogether unknown to the feudal law. The maxim "*quod solus deus hæredem facere potest, non homo*," is cited by Glanville as explanatory of the anomaly, that a man might give away during his lifetime all his acquisitions, but could not bequeath them after his death. The further maxim of "*hæres quem nuptiæ demonstrant*" completed the circle, within which the feudal law of inheritance could operate, so that the right of the lord to the maritage of the heir rendered the lord master of two positions, whereby he was enabled to secure in the case of male wards that they should not marry out of the pale of tenants by military service, and in the case of female wards that they should not intermarry with persons unfit or indisposed to perform the duties incidental to military tenure. The framework of the English law of wardship, in regard to the personal right of the chief lord to the maritage of the heir, seems to have been still complete in the reign of Henry II., and if that King occasionally departed from the rule and sold his wardships, it was an exception in favour of one, "who had no equal, much less a superior." Glanville alludes to this as in his time an occasional event, but subsequent mention is frequently found of this practice on the part of the Crown in charters both of King John and of Henry III., to which the barons gave their formal assent. It is not unreasonable to suppose, that the vicious example of the sovereign Lord had a corrupting influence upon the mesne Lords, and that the office of guardian, which was in its origin an office of personal trust, had come to be regarded

in Bracton's time as an office of personal interest, of which the lord might avail himself for his own pecuniary benefit regardless of any duty to his Order.

The subject of the dower of the widow, which follows the wardship of heirs, and with which Chapter XXXIX. commences, terminates the treatise *De acquirendo Rerum dominio*. It is not historically certain, as far as the Editor is aware, how the Anglo-Saxon "morgengif" came to be transformed into a gift on the part of the bridegroom at the door of the church before espousals. It may be presumed that the clergy were instrumental in effecting this change, and Glanville states that in his time the practice of endowing the bride at the door of the church was sanctioned by the ecclesiastical as well as by the secular law. The term *dos* was already used in Glanville's time in two senses. It signified *vulgariter*, to borrow from Glanville his own phrase, "id quod aliquis liber homo dat sponsæ suæ ad ostium ecclesiæ tempore desponsionis suæ" (lib. vi. c. 1.); and it is obvious that, when once the morgengif had been converted into a gift in view of coming marriage, it was susceptible of being treated according to the principles of the Roman law applicable to donations "propter nuptias futuras." The other sense, in which the term "dos" was used in Glanville's time, was substantially in accordance with the Roman use of the word "dos," to signify the marriage portion, which the spouse received from her parents or other kinsfolk, and brought into community with her husband. "In alia enim acceptione," says Glanville, "accipitur dos secundum leges Romanas, secundum quas proprie appellatur dos id, quod cum muliere datur viro, quod vulgariter dicitur maritagium" (lib. VII. c. 1.). This difference of origin, as regards the English and the Roman institution of dower, had ceased to be thought worthy of distinction in Bracton's time, who classes both kinds of dower under the common head of donations made in

view of marriage. The amelioration of the condition of the woman by the side of the man seems to have made a steady advance under the Plantagenet Kings. Paraphernal dower, which did not come at all into partition with the husband, is recognised by Bracton (fol. 92 b.), and he notices how the widow had acquired during the reign of Henry III. the further advantage of being enabled to bequeath the fruits and crops growing at the time of her decease upon the lands assigned to her for dower. This power of bequest was not allowed to the widow in Glanville's time. It was a privilege conferred on the widow by the provisions of Merton of 20 H. III., of which Bracton makes express mention.

A curious difficulty, however, arises upon the text of Bracton, in which he notices this fact: "It has been accustomed to be observed," he says (fol. 96), "that just as a wife receives her dower after the death of her husband, cultivated or uncultivated, so after the death of the wife it has been accustomed to be restored to the heir, cultivated or uncultivated, because the wife had no power to make a will of the crops and fruits not separated from the tenement, but by a new supervenient grace and provision, as is apparent from the provisions of Merton, a wife may make a will and dispose according to her pleasure of the fruits and crops, whether they have been separated from the soil or not." This statement of the law, if it stood alone, would be in perfect accordance with the constitution of Merton, by which term Bracton elsewhere (fol. 227) describes the provisions of Merton of 20 H. III. Those provisions are of this kind: "*Item omnes viduæ de cætero possunt legare blada .sua de terra sua, tam de dotibus suis, quam de aliis terris et tenementis suis, salvis serviciis domini minorum, quæ de dotibus et aliis tenementis suis debentur.*" There occur, however, in the text of Bracton, as printed in the edition of 1569, and as written in all the best MSS. which the Editor has examined, some

additional words, which cause the greatest historical perplexity. The full text of Bracton (fol. 96) is as follows: "Sed nova superveniente gratia et provisione, sicut patet de provisionibus de Merton *inter placita quæ sequuntur regem Henricum anno regni sui decimo octavo*, potest uxor de fructibus et bladis, sive a solo separata fuerint, sive non, testari, et pro voluntate sua disponere" (vol. ii. p. 82). It will be observed that the words, which the Editor has placed in italics, are not necessary to complete the sense of the context, whilst they are at variance with an indisputable historical fact, viz., that the provisions of Merton, by which the testamentary power of widows was enlarged in the manner stated by Bracton, were made in the twentieth year of the reign of Henry III., and were not in fact the results of a judgment on a plea brought before the King himself, but were the resolutions of a Council summoned to meet the King at Merton for the purpose of consulting respecting the approaching coronation of the King and his newly-married Consort, Eleanor, the daughter of the Count of Provence.

The passage as it stands in the full text of Bracton, as above italicised, would appear to allude to certain provisions of Merton made in the eighteenth year of the reign of Henry III. amongst the pleas heard before the King himself, and the Editor in his Introduction to the first volume, p. xli, has, upon the authority of this passage, suggested that the amendment of the law on the subject of the widow's dower was the result of a judgment in the first instance of the Aula Regis held at Merton in 18 H. III. and that it obtained subsequently legislative confirmation at Merton in 20 H. III. The passage as it stands seems to have perplexed various legal scribes, who had to copy the text of Bracton's work at a very early period. MS. Rawlinson C. 160 for instance has the numerals xviii, clearly written, whilst MS. Rawlinson C. 159 has xviiiij. On the other hand MSS. Godbold and

Corbet have the numerals xv., followed by a contraction of a singular character, which there is good reason for pronouncing to be the three numerals iii. rolled up together, which have become separated from the preceding xv., and are wanting to make up xviii. MS. Crewe, on the other hand, and the Chertsey MS. agree in exhibiting the alternative reading of "xv. *alias* xviii." The Editor before preparing the Introduction to the first volume had consulted the summary of the Plea Rolls (*Placitorum Abbreviatio*), published by the Record Commissioners in 1811, in the hope of finding a record of the pleas heard before the King in 18 H. III., but no pleas of that year are found in that collection. He has subsequently ascertained, that amongst the Rolls recently removed from the Tower of London to the Public Record Office, but which have not yet been printed, the Roll of the Pleas heard before the King in 18 H. III. has been preserved, and through the courtesy of Mr. William Hardy, the Deputy Keeper of the Records, he has had the Roll of that year carefully examined, and has ascertained that its contents are of considerable interest. They serve not merely to throw a direct light upon the text of Bracton, but also to correct incidentally a serious error, into which Selden has fallen in his *Titles of Honor* (Part 2, ch. v. § xxiii.), and into which the authority of Selden has betrayed Sir William Blackstone in his Introduction to his treatise on the Great Charter, Oxford edition, anno 1771, p. 133.

It should be premised, that Bracton in his treatise *De Exceptionibus*, which occupies a later portion of his work (fol. 416 b.), has gone very fully into the proceedings of the so-called Parliament of Merton of 20 H. III., when the Barons pronounced their dissent from the proposals of the Bishops in the memorable words "*Nolumus leges Angliæ mutare.*" Bracton goes on to state that "afterwards, on the Thursday following the festival of St. Denis in the same year, in the presence of the King

“ himself and the undersigned parties, at a Council expressly convoked, it was provided and conceded by the King himself in the presence of Edmund Archbishop of Canterbury, Ralph Bishop of Chichester, the King’s Chancellor, Richard Bishop of Durham, &c. (fol. 417),” that a special form of proceeding should be observed, when the King’s Court consulted the Ordinary in a case of special bastardy. Selden appears to have been imperfectly informed as to the contents of the Plea Roll of 18 H. III., and has supposed that it purported to be exclusively a record of the pleas heard before the King at Tewkesbury, and he goes further astray in asserting that on the face of it the roll is clearly not a Plea Roll, but a transcript out of a Parliament Roll. He adheres, however, to the date of 18 H. III., and upon that assurance contends that Bracton is in error, in his treatise *De Exceptionibus*, in reciting the provision of the King’s Council made on the Thursday following the festival of St. Denis as having been made in 20 H. III. Sir William Blackstone on the other hand, relying upon the authority of Selden and on his citation of the original record under the title of *Placita apud Theokeburiam* 18 H. III. dors. rot. 15, states as a fact that it was ordained in a Parliament held at Tewkesbury on 12 October A.D. 1234 (18 H. III.), that for the future, whenever special bastardy was pleaded, the form of the inquisition directed to the Bishops should be to inquire not whether bastard or not, but whether born before marriage or not, to which the Ordinary should return a plain and categorical answer; that according as this fact was certified, the King’s Courts might determine the legitimacy. It is not surprising, that the combined authority of Selden and of Sir William Blackstone should have been accepted by subsequent writers, as a sufficient assurance of a Parliament having been held at Tewkesbury in the eighteenth year of Henry III., and Mr. C. H. Parry has accordingly, on Selden’s authority, inserted such a Council or Parliament

in his carefully prepared work on the Parliaments and Councils of England, London, 1839. It is, however, a fact beyond dispute, that no such Parliament was held at Tewkesbury on the 12th October 1234, inasmuch as the presence of the King at Westminster on that day is vouched not merely by the Plea Roll itself of that month, but by entries in the Patent and Close Rolls of 18 H. III.

The Plea Rolls, which have been published in the collection known by the title of *Placitorum Abbreviatio*, and which have been already alluded to, purport to be the Plea Rolls preserved in the Chapter House of Westminster Abbey. There are very few Plea Rolls of H. III. in that collection, and such as have been preserved of that King's reign refer mostly to portions of it later than 18 H. III. They are however, of historical value, as they confirm a fact of considerable legal interest, namely, the revival of the office of "*Justitiarius Angliæ*" in the person of Hugh Bigot in 1258. The Tower Plea Rolls, on the other hand, extend from 9 H. III. to 53 H. III., not consecutively indeed, but with considerable gaps between them. They contain, however, the Pleas of very important years, such, for instance, as those of 9 H. III., when the third Charter of H. III. was granted; of 18 H. III., when the procedure in cases of special bastardy was settled; of 42 H. III., when the provisions of Oxford were published and the office of Justiciary of England was revived; and of 52 H. III., when, according to Mr. Foss, in his *Lives of the Judges*, ii. p. 155, a new title was given to the head of the King's Court by the appointment of Robert de Brus as "*Capitulis Justitiarius ad placita coram Rege tenenda*," or, as he is now styled, Chief Justice of the King's Bench.

An account of the contents of the Plea Roll of 18 H. III. has been supplied to the Editor by the courtesy of Mr. William Hardy, the Deputy Keeper of the Public Records, and is as follows:—

"The '*Coram Rege*' Roll of 18 Henry III., formerly

“ preserved in the Tower of London, consists of thirty-
 “ two membranes, attached together by their upper edges.
 “ All of them, with the exception of the eleventh, are
 “ written over on both sides. The twenty-first membrane
 “ contains on its dorse only the words ‘ Recordum loquele
 “ ‘ de Judæis Norwici, qui sunt in prisa apud London,’
 “ descriptive of the entry on its face. To the foot of
 “ the first membrane a small cedula is attached, con-
 “ taining a list of names arranged in two columns; a
 “ portion of the second column is lost. Rows of holes
 “ existing at the foot of membranes 3, 4, 20, 25, and 26
 “ possibly indicate that cedulae were formerly attached to
 “ them. The contents of the Roll are fairly legible, but
 “ the edges of the membranes are in many cases much
 “ decayed or eaten away, and many of them are so frail,
 “ as scarcely to admit of being handled. It might be
 “ worth while to transcribe the entire document, if only
 “ to save it from the chance of further unavoidable injury
 “ at the hands of those, who may consult it in future.”

“ The nature of the proceedings entered on the Roll
 “ may be inferred from the headings. The first of them
 “ is on membrane I., and runs, so far as it can be read:
 “ ‘ Placita aꝓd Theokesb corā W. de Ralegh Godefr de
 “ ‘ Crauwecumb añ Pentecost añ Reġ H. xviiġ.’ There
 “ are Placita before the King at Wallingford, Reading,
 “ Kenington, Windsor, and Westminster, and Placita et
 “ Assise at Woodstock. There is a Conventio before the
 “ King and his Council at Marlborough. There are also
 “ Placita before Ralegh and Crauwecumb at Tewkesbury
 “ (already mentioned); Querele before the same; Placita
 “ at Winchecomb, Rochester, Windsor, Odiham, Chertsey,
 “ and Westminster, and an Assise of novel disseisin before
 “ Ralegh and Rockele. On membrane 21 is a very in-
 “ teresting account of the abduction and circumcision of
 “ one Odardus, a boy aged five years, the son of a certain
 “ Wychardus Phisicus, by Jacob of Norwich, a Jew, five

" years before.¹ The details are exceedingly curious. " With regard to the provision relating to bastardy made " by the King and certain of his Council on the Thursday " after the feast of St. Denis (12th October), 18 H. III. " (in 15 dors.), it follows a heading : ' Placita apud Westm̃ " ' corā Dño Rege in Oct. Sti. Mich. añ. Regñ. ejusd. " ' xviiije.,' and was therefore presumably made at West- " minster. That on the day, on which it was made, the " King was not at Tewkesbury is clear from entries in the " Patent and Close Rolls of the 18 Henry III., from " which it appears that he was at Westminster on the " 7th, 8th, 9th (St. Denis' Day), 11th, and 12th October."

There can be no doubt that Selden's observations, in his work on *Titles of Honor*, have reference to this particular membrane, " No. 15 dorso," of the Roll of the Pleas heard " *coram Rege* " at Westminster in 18 H. III., and not to any other membrane, which might possibly be now missing, inasmuch as he specifies the names subscribed to it, which he considers to be the Roll of the Parliament held at Tewkesbury in that year, and he contrasts them with the names, which Bracton (f. 417) enumerates as subscribed to the Roll of a Plea heard " *coram Rege* " in 20 H. III. The names of the archbishop and bishops and of the earls and barons are identical in both cases, with the exception of two or three names towards the end of the lists, as may be tested by a comparison of the Plea Roll, the text of which the Editor has annexed in Appendix III., with the list which Bracton has enumerated in folio 417. It is obvious, therefore, that the expert, upon whom, rather than on himself, Selden most probably relied for a correct report of the contents of the Plea Roll of 18 H. III., did not examine it with sufficient accuracy, and that the Parliament of Tewkesbury of 18 H. III. has never had any existence, except

¹ An account is given of the trial of the parties concerned in this affair by Matthew Paris in his

Historia Anglorum, Rolls' edition, vol. ii., p. 375.

in a baseless conjecture, which Selden has hazarded in explanation of a misrepresented fact. It may not be out of place to mention that the *Annales de Theokesberia* (Rolls edition of the *Annales Monastici*, vol i. p. 95) are silent as to any such Parliament having met at Tewkesbury in 1234, and that no mention of it is found either in the contemporary, "*Chronica Majora*" of Matthew Paris, or in the *Annals of Burton*.

It remains to consider, how the words *inter placita quæ sequuntur regem Henricum anno regni sui decimo octavo* have found their way into Bracton's text. That Bracton was familiar with the provisions of Merton of 20 H. III. at the time when he composed Chapter XL. of his treatise "*De acquirendo rerum dominio*," may be presumed from the fact that Chapter XXXVIII. which precedes it on the subject of the marriage of heirs, and which he recites (fol. 91 b.) as a provision made at a Common Council of the realm, is an embodiment of the sixth chapter of the text of the provisions of Merton of 20 H. III., as printed in the collection of the Statutes of the Realm, published by the Record Commissioners in 1810. Mr. H. S. Milman, however, who has paid great attention to the text of Bracton, has suggested¹ that the sixth chapter of the authorised text of the provisions of Merton is no part of the original Statute of Merton of 20 H. III., but is probably of an earlier date. Mr. Milman founds his suggestion on two arguments, first, that Bracton in his embodiment of the sixth chapter (fol. 91 b.) does not apply to it the epithet of "new," which epithet is applied by him to the first chapter of the statute, which he quotes as a "*nova constitutio*" in his treatise *De actione dotis* (fol. 312 b.); secondly, that this chapter is not included in the King's writ concerning the new constitution, which was sent round to the Sheriffs and to the Justices Itinerant on 30th January immediately

¹ On the Statute of Merton, *Law Magazine and Review*, N.S., vol. iv. p. 16, 1875.

following the passing of the statute, with directions that it should be read in the full county court and firmly kept.¹ The first argument, however, is by no means conclusive, as Bracton elsewhere (fol. 227) cites the fourth chapter of the provisions of Merton, as a certain constitution called that of Merton (*quædam constitutio, quæ dicitur constitutio de Merton*) without the prefix of "nova" applied to it. The second argument of Mr. Milman is of greater weight, as the particular chapter of the authorised text is not found either in the text of the "*Statuta regis Henrici III. apud Meretonam*" set forth by Matthew Paris, a contemporary chronicler, nor in the text of the "*Leges de Merton*" as recited in the *Annals of Burton*. Howsoever this may be, the fact does not affect the position, that Bracton was well acquainted with the text of the provisions of Merton of 20 H. III., for whenever he cites them as such by name he is supported by the testimony of the two annalists above mentioned, as well as by the authorised text of the provisions themselves. It is not therefore altogether reasonable to suppose that in citing the chapter of the provisions of Merton of 20 H. III. as to the widow's dower, he should have made so gross a blunder as to represent it to be the result of a judgment "*coram Rege*" in 18 H. III. On the other hand, if the words, which cause the perplexity, were appended to Bracton's text at a very early period as a side note, there would be a sufficient reason for so appending them, inasmuch as the question of special bastardy, which was the subject of the judgment "*coram rege*" in 18 H. III., was re-considered and re-affirmed in the Council of Merton of 20 H. III. The proposal, however, of the bishops was on this occasion negatived by the lay peers, and this circumstance may account for the silence of Matthew Paris, who has recorded only such provisions as became law.

The treatise "*De actionibus*," with which the third book in the printed edition of 1569 commences, is divisible

¹ Rot. Claus. 20 H. III. m. 12 d.

into three parts, the first four chapters being concerned with the subject-matter of civil actions, the next seven chapters with courts and jurisdictions, and the twelfth and last chapter with the order of proceeding in civil actions. If it were allowable to speculate upon the circumstances, under which the various chapters of this treatise were compiled, the Editor would have no hesitation in saying that the scholastic character of the first four chapters betrays an academic origin, and that they might well pass muster for a dissertation delivered from a Professor's Chair of Civil Law, such as that which Bracton is said to have filled in the University of Oxford. The first chapter opens with an illustration of the relation, which actions bear to obligations, which has been evidently borrowed from Azo's *Summa* on the *Institutes*. "It is to be known," says Bracton, "that an action arises from a preceding obligation, as a daughter from a mother." He then goes on to assign for the origin of obligations the four sources, which are recognised in the Roman Law, contract and quasi contract, delict and quasi delict. He then proceeds to distinguish between "*nuda pacta*" and "*pacta vestita*," adopting the six heads of "*vestimenta pactorum*," which are familiar to civilians, and which Bracton has already enumerated in his previous treatise *De acquirendo rerum dominio*, fol. 16 b., in the memorial verses :

Re, verbis, scripto, consensu, traditione,
Junctura vestes sumere pacta solent.

Further he goes on to trace analogies between the English law respecting written conventions and the Roman law of verbal stipulations, so as to apply the principles of the Roman stipulations to the subject matter of conventions in writing, upon which alone actions were maintainable in England. In the course of the discussion he makes use of an illustration, which savours strongly of an academic origin. "Likewise," he says, "places are brought into stipulation, as if you should say, *being at Oxford*

"to-day, do you promise to give in London? Such a stipulation will be useless, unless a time be added, within which the thing brought into stipulation may be done" (fol. 100). Such an illustration would be very apposite, if it were presented to an audience assembled in the Law School at Oxford, and its appositeness would well warrant the author in substituting it for the original illustration in the Institutes, "Et ideo, si quis Romæ ita stipulatur, *hodie Carthagini dare spondes, inutilis erit stipulatio, cum impossibilis sit repromissio*," l. iii. tit. xvi. § 5.

The Roman principle of real contracts had found acceptance in England before the time of Glanville. It was in the nature of things, that men should buy and sell, borrow and lend, hire and let, and Glanville's commentary on these transactions of ordinary life is in complete accordance with the Roman law, but Glanville's treatment of these subjects is tentative, as compared with that of Bracton. The latter's exposition of them is almost taken literally from the Institutes of Justinian, and he supplies rules for the decision of questions, which in Glanville's time had evidently not received a definite solution. For instance, in the case of a thing lent to another person for his use and to be returned after it has been used, which is designated in the Roman law by the term *commodatum* as distinguished from *mutuum*, Glanville states that the borrower is under all circumstances bound to restore the thing itself or its reasonable value, and there he leaves the subject. Bracton, on the other hand, after distinguishing the contract of *commodatum* from the contract of *mutuum*, adopts the principle of the Roman law, and relieves the *commodatarius* of all responsibility in cases of *vis major*, or of *casus fortuiti, nisi culpa sua intervenerit*. This is in complete accordance with the Institutes of Justinian, l. iii. tit. xv. § 2.

The passage, in which Bracton expounds the law, as amended in his time, has given rise to considerable

controversy. Chief Justice Holt, in *Coggs v. Bernard*, Lord Raymond's Reports, p. 915, in citing the passage, adopts a reading at variance with the text of the printed book of 1569. The passage as it stands in the printed book (fol. 98) is as follows: "Sed magna est differentia inter mutuum et commodatum, quia is qui rem commodatam accepit, ad ipsam restituendam tenetur vel ejus pretium, si forte incendio, ruinâ, naufragio, aut latronum vel hostium incursu consumpta fuerit vel deperdita, subtracta vel ablata," vol. ii. p. 108. Chief Justice Holt, in citing this passage, adopts the reading, "quia is qui rem *mutuam* accepit," in the place of "quia is, qui rem *commodatam* accepit." Sir William Jones, on the other hand, in his *Law of Bailments*, 64 (x.), rejects Chief Justice Holt's amendment of the passage, and observes that it is difficult to reconcile the amendment with the words "ad ipsam restituendam," and there is great force in Sir W. Jones' criticism. Fleta also, ii. 56, § 5, reproduces the identical reading, which is adopted in the printed text of Bracton, and the Editor has failed to discover in any MS. a reading, which is confirmatory of Chief Justice Holt's correction. It must be admitted that the passage as it stands in the printed book is in itself intelligible; on the other hand, it is in evident contradiction with what Bracton states in the next but one following sentence: "Ad vim autem majorem vel casus fortuitos non tenetur quis, nisi culpa sua inter- venerit, ut si rem sibi commodatam domi secum detulerit, cum peregre profectus fuerit, et illam incursu hostium vel prædonum vel naufragio amiserit, non est dubium, quin ad rem restituendam teneatur." This contradiction is suggestive, that there is something either wanting or redundant in the printed book, and Sir William Jones, after observing that there is certainly some mistake in the passage, suspects the omission of a whole line after the word "pretium," where the oldest MS. which he had seen, has a full stop, and he very appositely suggests

that the line omitted may be thus supplied from the Institutes: "*At is qui mutuum accepit, obligatus re-
manet, si forte incendio, etc.*" This would be a very legitimate correction, as it brings Bracton's text into general harmony with the text of the Institutes (l. iii. tit. xv. § 2-4), which has been followed by Bracton throughout the rest of the chapter.

It deserves notice that Bracton, in discussing the law of obligations, expressly rejects the Roman law in several instances as not applicable to English obligations, one of the most remarkable instances being that in which he states, that if a person shall write that he owes money to another, whether the money has been paid to him or not, he shall be bound by the writing (f. 100 b.). Such was the law of England in Glanville's time (l. x. c. 13), and the Roman law had failed to supersede it in Bracton's time. On the other hand, whilst Roman consensual contracts were not recognized by English law, as, for instance, the contract of buying and selling was not a true consensual contract according to English law, nevertheless the Roman law with regard to earnest money had worked its way in Bracton's time into the English contract of "*emptio et venditio*," so to supply an answer to a question, for which Glanville was at a loss. The purchaser's right to withdraw from his bargain upon the forfeiture of his earnest money had been admitted in England from a very early time, but the right of the vendor to withdraw from his bargain was not definitely settled in Glanville's time, whereas Bracton treats it as settled law, that the vendor might withdraw upon

¹ Glanville puts the question in this form, "*Ubi vero solæ arrhæ datæ sunt, si emptor a contractu recedere voluerit, id ei cum arrharum amissione licebit. Sin autem venditor recedere voluerit in tali causâ, quæro utrum sine*

pœna id facere possit? quod non videtur, quia tunc videretur in hoc melioris conditionis venditor quam emptor? Quod si impune id fieri nequit, quam pœnam inde præstabit? L. x. c. 14."

restoring to the purchaser double of what he had received as earnest money (fol. 62).¹ But Bracton deals with this question, not in his chapter on obligations, but in discussing the causes of acquiring the dominion of things, and he expressly guards himself against being supposed to desire to break down the old established English rule, that actions were only maintainable for the enforcement of contracts, when the contracts were made in solemn form and in writing.

Thus he states that, when earnest money had been paid, an action might be brought by the vendor to recover that, which is wanting in the price, by a suitable action, but not to compel the purchaser to ratify the contract (vol. 1, p. 491).

After discussing the law of obligations, Bracton proceeds in the third chapter to discuss the theory of actions. Having at the commencement of the treatise defined an action to be nothing else, than the right of a person to pursue in court a thing which is due to him, adopting herein the identical language of the Institutes, he proceeds upon the basis of the Institutes or of Azo's Summa, for they are in this respect identical, to divide actions into three classes, according as some are real, others personal, and others mixed. The term real, as used in this classification, is applied to actions which were directed to obtain possession of an immoveable thing or of a right incidental to it. Personal actions on the other hand might be brought for the possession of a moveable, or for damages on account of a wrongful taking or a wrongful detention of it. Mixed actions formed a third class, in which the object of the suit was a thing either moveable or immoveable, and a penalty for the wrongful detention of it. This division of actions does not appear

¹ This is in accordance with the Roman law (Institutes, l. iii. tit. xxiv. proem), which was received by the German and the Scandinavian nations.

to have been adopted in Glanville's time, in fact the personal action seems to have obtained a formal recognition in the King's courts subsequently to his time, as Glanville himself avows, that the King's courts did not willingly mix themselves up with personal contracts, which did not touch real property. We may, therefore, regard the adoption in Bracton's work of this threefold division of actions in accordance with the Roman law, as marking a considerable advance of the English courts in legal science, and that this advance was maintained in the reign of Edward I. in this particular branch of the law may be inferred from the more complete manner, in which Fleta, as compared with Bracton, expounds the subject of procedure in personal actions. He recasts, as it were, and treats in special detail several subjects, on which Bracton has only slightly touched.

Bracton goes on to make a further division of personal actions into civil and criminal, and he enumerates various examples of the latter borrowed from the Digest. Further he goes on to show how, in the English system of possessory petitions for an inheritance, the assise of novel disseysine and the assise "de morte antecessoris" were adaptations of the Roman actions of "unde vi" and of "quorum bonorum."

Bracton in Chapters V. and VI. touches very slightly upon criminal actions and the two kinds of punishment, with which malefactors are visited, justifying the invention of punishments as a means of restraining men from sin, where the fear of God does not restrain them from evil. He does not object to torture as a means of obtaining evidence, but deprecates the use of it as a means of punishment, and he upholds the general principle, that punishments are rather to be mitigated than exasperated. He then passes on to the consideration of the tribunals, before which civil actions may be brought, distinguishing between the Baron's court, the County court, and the King's court; and when he comes to consider

the class of pleas, which are properly triable in the King's court, he enters upon a discussion of the various kinds of justiciaries, which is not merely juridically instructive, but is likewise historically interesting, inasmuch as he altogether ignores the office of Chief Justiciary of England. It has been a subject of controversy whether, after the ejectment of Stephen de Segrave from the office of Chief Justiciary of England in 18 H. III., a successor to him in that high office was appointed or not, and the better opinion would seem to be, that in the interval from April, 18 H. III. (1234), until the Parliament met at Oxford in June, 42 H. III. (1258), there was no Chief Justiciary of England. A single chronicler, Fabyan, states that John Mansel, Provost of Beverley, was made "Chefe Justyce of Englande" in 1257, and that in that capacity he was one of the twelve peers appointed on the King's part to confer with the twelve peers appointed on the part of the Barons. Mr. Foss, in his *Judges of England*, vol. ii. p. 153, has carefully examined this statement of Fabyan, and alleges good reasons for not attaching credit to it. Amongst other facts he calls attention to this fact in particular, that in a patent of May 1258 issued shortly before the Parliament assembled at Oxford, and in another patent of June in the same year issued shortly after the Parliament had dispersed, John Mansel is described simply as Treasurer of York, whereas the practice had hitherto been, in regard to the Chief Justices of England, always to append in public documents the title of "*Justitiarius Angliæ*" to their names. This had been the practice in the case of Hubert de Burgh and Stephen de Segrave, who were successively justiciaries of England in the early part of the reign of Henry III., and was again observed when Hugh Bigot was appointed by the Barons to that office at Oxford in June 1258. However this may be, it had been a subject of frequent complaint on the part of the Barons in the interval between the ejectment of Stephen de Segrave and the

Parliament of Oxford, that the King, unlike his illustrious predecessors, governed without a Justiciary, Chancellor, or Treasurer. Matthew Paris cites several instances of such complaints having been made by the Barons, and of the King not having kept his promise to them. The result was, that at the Parliament assembled at Oxford, in 1258, the Barons took the matter into their own hands, and elected Hugh Bigot, Chief Justiciary. The title "*Justiciarius Angliæ*" came once more into use, and was borne successively by Hugh Bigot, as above-mentioned, Philip Basset, and Hugh le Despenser, and after the latter fell on the battle-field of Evesham by the side of Simon de Montfort, on 4th August 1265, there is no authentic record of its further use. It has been thought that the appointment, in 52 H. III. (1268), of Robert de Brus, at that time a justiciary of the bench, to the office of "*Capitalis Justiciarius ad placita coram rege tenenda*," marks the dividing line, which separates the office of Chief Justice of the King's Bench from the ancient office of Chief Justiciary of England. It is, however, deserving of remark that the title of "*justitiarius capitalis*" was in Bracton's time the general title of the judges of the Supreme Court, the *Aula Regis*, of which the sittings were always supposed to be, if they were not in reality, held "*coram ipso Rege*."

Bracton has made two well-considered statements as to the diversity of justiciaries in his time, which seem to deserve more attention, than they have received in the controversy touching the constitution of the "*justitiiarii de banco*" in the reign of H. III. The first statement, which he makes, has reference to the question in what courts civil actions are to be decided (Chapter VII.): "But civil pleas," he says, "for a thing or against a person to be determined in the King's court, are determined before different justiciaries. For he has several courts, in which different actions are determined, and of those courts he has a special one of his own, as the

“ King’s Hall (*Aula Regis*), and Chief Justiciaries (*Justitios Capitales*), who determine the special causes of the King and of all others upon complaint, or through a privilege or a franchise, as if there be some one, who ought not to be impleaded except before the Lord the King himself (*coram ipso Domino Rege*). He has also a court and justiciaries resident in the Bench (*justitios in banco residentes*) who hold cognizance of all pleas, respecting which they have authority to take cognizance, and without a warrant they do not exercise jurisdiction nor coercion. He has also justiciaries itinerant from county to county, sometimes to hear all pleas, sometimes to hear special pleas, or to hold assises of novel disseysine, or of the death of an ancestor, and to deliver jails, sometimes for one singly or for two and not more. In all these cases the courts will be those of the King himself (*curiæ ipsius domini regis*), vol. ii. p. 161.” Having interposed a couple of chapters upon the duties of judges to keep their hands clean from filthy gifts, which corrupt the straight line of judgment, and upon the duty of the King himself, as the vicar of God on earth, to separate justice from injustice, Bracton proceeds to warn men from seeking to be judges, before they have learnt the law, lest they fall down from on high in their endeavour to fly before they have got wings, and thereupon he enumerates again the diversities of justiciaries. “ Likewise,” he says, “ some are chief (*capitales*), perpetual, and supreme, resident by the side of the King, who are bound to correct the injuries and the errors of all the others. There are others perpetual, resident at a certain place as in the bench (*certo loco residentes, sicut in banco*), determining all arguments respecting which they have a warrant, all of whom commence exercising their jurisdiction by taking an oath. Likewise there are others itinerant from place to place, as from county to county, sometimes for all pleas, sometimes only for special pleas, as for assises and jails, and

“ who begin to exercise authority without an oath, when they have received the King’s writ of warranty. There are also justices appointed for certain assises, two or three or more, who are not perpetual, because when their duty has been fulfilled, they lose their jurisdiction, vol. ii. p. 181.” The total silence of Bracton in both these passages as to the office of “Justiciarius Angliæ” is remarkable, and can only be accounted for on the supposition, that there was no such high officer at the time when he drew up his statements of the diversities of justiciaries, for the two statements may be regarded as in substance identical. Considered from this point of view, these chapters may be taken to have been written before the provisions of Oxford were enforced upon the King, in 1258, when the office of Chief Justiciary of England was revived by the Barons, and the office was then declared to be tenable henceforth only for a year. The silence of Bracton on this subject would be quite in accordance with the other facts specified in the Introduction to the first volume, as fixing the completion of Bracton’s work shortly prior to 1258.

To resume the consideration of the *status* of the justiciaries of the bench in Bracton’s time, it may be observed that the mention of *justitiiarii de banco* occurs three times in Glanville, by which term Glanville evidently meant to describe certain justiciaries of the Curia Regis sitting *in banco*; but in what place the justiciaries sat on such occasion has perplexed the most able of their successors to determine. The increase of the business of the Curia Regis by the frequent removal of civil suits into it had called for an increase in the number of permanent justiciaries towards the middle of the reign of Henry II., when six justiciaries were appointed by the Council of Windsor (25 H. II.) to try civil suits in the King’s Court under the title of “Justitiæ in Curia Regis ad audiendum clamos mores populi” (R. de Hoveden, ii. p. 190). Ranulph

de Glanville, afterwards Chief Justiciary, by whose hand or under whose directions the "Tractatus de Legibus" was composed, was one of these six justiciaries. No mention, however, is made in these statutes of any place, where the six justiciaries were to hold their sittings further than that they were justiciaries in the "Curia Regis." There is, however, abundant proof that during the reign of Henry II. fines or final concords, which were the voluntary terminations of civil suits between individuals, and which were probably introduced after 25 Henry II., as there are none extant earlier than 28 Henry II., were acknowledged at the Exchequer, when they were settled in the Curia Regis at Westminster and not on the circuits of the Justices Itinerant.

The Exchequer, however, in the reign of Henry II. seems to have been a distinct court from the court in which the King himself presided, and the Chief Justiciary of England was *ex officio* President of the Exchequer Court. The author of the "Dialogus de Scaccario," reputed to be Richard Fitznigel, Bishop of London, son of Nigel, Bishop of Ely, Treasurer of the Exchequer, and great nephew of Roger Bishop of Salisbury, who organised the administration of the Exchequer as established in the reign of Henry I., describes the Exchequer Court, as it existed in the time of Henry II., and explains the meaning of the term *scaccarium*,¹ that it signified a square table at which the officers of the King's Exchequer were seated, and over which a rich chequered cloth was spread, which was renewed at the commencement of

¹ The word "scaccarium" originally meant a chessboard, when it came first into use at Westminster, and the "scaccarium" was the table in the lower room marked out in chequers or squares, on which the

money was paid and counted, and where the tallies were cut, which were afterward sent up to the Upper Chamber to be counted and registered.

every Easter term. Around this table were placed four benches, upon which the different officers of the Exchequer were seated, and amongst the occupants of the uppermost bench was the Chief Justiciary, and at his side were seated certain other justiciaries, whom it pleased the King to nominate as legal assessors of the court. Their business was to determine any doubtful point of law, which might arise in settling the King's accounts with the sheriffs of the counties. In course of time the table gave its name to the chamber, in which it was placed, and the court, for it was a court of record from the earliest period, came to be designated the Exchequer (*ad scaccarium*) in like manner as it had previously been designated "the tallies" (*ad taleas*). It seems to have rested with the King, at the time when the *Dialogus de Scaccario* was composed (23 H. II.), to appoint such justiciaries as he pleased to be the assessors of the Chief Justiciary in the Court of the Exchequer, and it is not an unreasonable conjecture, that the justiciaries so appointed came to be designated "justiciarii de banco," from the fact of their sitting on the bench at the Exchequer table by the side of the Chief Justiciary. These justiciaries were a distinct body from the *Barones Scaccarii*. They were not justiciaries of the Exchequer, but only accidental members of the court. When the change was made by the Council of Windsor in 26 H. II., under which six permanent justiciaries were appointed to hear civil suits in the King's Court at Westminster, those justiciaries seem to have succeeded to the title of "justiciarii de banco," some of them being in fact justiciaries who had been accustomed to sit as assessors at the Court of the Exchequer, and the title having become in practice the most honourable after the title of Chief Justiciary. Ranulph de Glanville, as above mentioned, was one of these six justiciaries before he became Chief Justiciary,

and his "*Tractatus de Legibus*," in which the term *justitiiarii de banco* occurs for the first time, gave to the term both currency and authority. So far there may be little difficulty in determining the origin of the term "*justitiiarii de banco*," and in tracing its earliest use to Glanville. Mr. Foss, in his *Lives of the Judges*, states that he cannot find that "*justitiiarii de banco*" are ever named in the reign of Richard I., although the expressions "*habet diem in banco*" and "*qui venerunt in banco*" occur now and then in legal proceedings during that King's reign. On the other hand, the term *justitiiarii de banco* is frequently used in the reign of King John, and "*bancus*," like its elder brother "*scaccarium*," came in a short time to signify the chamber, in which the King's justiciaries held their sittings in Westminster to hear civil suits without the presence of the Chief Justiciary. The Chief Justiciary held his court of criminal justice within the Tower of London; the Justiciaries of the Bench held their court of civil instance in some place or other within the King's Palace at Westminster, and most probably in the Upper Chamber of the Exchequer. The organisation of the "*justitiiarii de banco*," as a body of justiciaries holding permanent sittings at Westminster, dates from the Charter of Liberties of King John, or practically it might be said from its confirmation by Henry III. immediately on his accession in 1216, under which it was provided that "*communia placita non sequantur curiam nostram, sed teneantur in aliquo loco certo*." This provision is repeated in the second charter of Henry III. in 1217, and again in the third charter of 1225. It does not follow from this frequent repetition, that the provision of the earlier charters had been altogether a dead letter; the probability, however, is that the business of the *justitiiarii de banco* increased very much after the introduction into the charters of Henry III.

of two clauses, which had no place in the charter of King John, under which clauses it was provided that difficult points of law, which could not be solved by the judges itinerant on their circuits, should be reserved for the decision of the "justiciarii de banco," and further that assises concerning a last presentation should always be heard "coram justiciariis de banco et ibi terminentur."

The collection of Pleas published by the Record Commissioners in 1811, under the title of *Placitorum Abbrevisatio*, are taken from the proceedings of the Curia Regis, of which the Rolls were preserved in the Chapter House of Westminster Abbey. Mandates also are frequently found in this collection addressed by the King or his Chief Justiciary to the other justiciaries, sometimes to justitiiarii domini regis de Westmonasterio, sometimes to justitiiarii de banco, sometimes to justitiiarii in banco. Bracton also, in Chapter XI., de Actionibus, has handed down to us a collection of writs in use in his time, which speak of justiciarii nostri apud Westmonasterium, justiciarii nostri de banco simply, and justiciarii nostri de banco apud Westmonasterium; but Bracton has set forth no writ which speaks of "justiciarii in banco." Mention, however, is made in several of the writs recited by him of "placita" and "loquelæ" quæ sunt in banco. Bracton further commences his Chapter XI. by speaking of the justiciarii capitales in banco residentes, so far using a similar phrase to that which Glanville uses, when he speaks of final concords recited "coram justiciis domini regis in banco residentibus." There is no doubt that the term "in banco residentes," as used by both these writers, is of the same signification as "in banco sedentes;" but Bracton distinguishes and dignifies the justiciarii de banco, in the passage above referred to, by the epithet of "capitales," as if they were personally of

co-ordinate rank with the justiciaries, who sat by the side of the King to hear "*placita coram rege*," whom he elsewhere describes as *capitales, generales, and perpetui*. It would assist very much to clear up the difficulty, which arises upon Bracton's division of the King's justiciaries into two orders apparently, namely, "*justiciarii a latere regis residentes*" and "*justiciarii in banco residentes*," if the Lords Commissioners of Her Majesty's Treasury would authorise that portion of the Tower Plea Rolls, which contains the *Placita coram Rege* in the reign of Henry III. to be printed and published. These Rolls seem to have been unknown to the Record Commissioners in 1811, who published the Plea Rolls preserved in the Chapter House at Westminster, which are very defective as regards the reign of Henry III. The single Roll of 18 Henry III., of which the Editor has been enabled to publish a short report (*suprà*, p. xxi,) prepared by Mr. F. S. Haydon, senior clerk of the Record Office, is full of instruction as to the historical value of these Rolls, which are not identical with the Chapter House Rolls, and which relate to some of the most eventful years of the reign of Henry III.

It appears from the Plea Roll of 18 H. III. that two justiciaries accompanied the King as he travelled from place to place in that year. Mention is made in the first instance of William de Radlegh and Godfrey de Crawcombe¹ as hearing pleas before the King at Tewkesbury and at various other places, and secondly, of William de Radlegh and Robert de Rokele holding an assise of novel

¹ Godfrey de Crawcombe is not mentioned by Mr. Foss in his *Lives of the Judges*, but there is frequent mention of him in *Madox's History of the Exchequer*. He was sheriff of Oxfordshire in 16 H. III.,

and is a subscribing witness in 17 H. III. to the Act under which the Great Seal was delivered to Ralph de Nevile, Bishop of Chichester.

disseysine. Of Godfrey de Crawcombe little is known, although his name appears subscribed on the Roll of the Plea on the subject of special bastardy heard before the King at Westminster on the Thursday after the festival of St. Denis, A.D. 1234 (Appendix III.). Robert de Rokelle, on the other hand, is known to have been admitted a justice of the bench on July 6, 1234, and fines are recorded as levied before William de Radlegh at Westminster at various times between 13 Henry III. and 19 Henry III. (1228-1235), from which it may be inferred that at such times he acted in the capacity of "justiciarius de banco." William de Radlegh was a remarkable personage, and the Editor ventures to suggest that it was under his auspices and those of Martin de Pateshull, that Bracton made so great a career and achieved such eminence in the study of the law.

Martin de Pateshull, during the time when Hubert de Burgh was Chief Justiciary (1215-1232), held a very high position amongst the justiciaries of the Bench, being at the head of every commission of justices itinerant to which he was attached in 9, 10, and 11 Henry III. The earliest of the law cases cited by Bracton (fol. 364) contains a judgment delivered by Martin de Pateshull in the reign of King John on the Leicester circuit, the date of which however is not supplied by Bracton. By some accident this judgment appears to have escaped the notice of Mr. Foss, who speaks of Martin de Pateshull having been raised to the the Bench very soon after the accession of King Henry III. He seems to have been a justiciary of extraordinary capacity with a formidable appetite for work, who was able to tire out his associate judges on the circuit, not excepting even William de Radlegh. The Fourth Report of the Public Records, Appendix II., supplies curious evidence of this fact in a letter to the authorities at Westminster from an associated

justiciary, who had been designated to accompany Martin de Pateshull on the York circuit, in which he prays to be eased of his office and to be allowed to go quietly away to his church in Yorkshire, for he says, "the said Martin is strong, and in his labour so sedulous and practised that all his associates, especially W. de Ralegh and myself, are overpowered by the labour of Martin de Pateshull, who works every day from sunrise to night." This account of the untiring energy of Martin de Pateshull is the more remarkable, inasmuch as William de Radleghe seems to have been a justiciary, who had no disposition to shirk his work. He was a native of Devonshire, and appears from Letters Patent of 14 John to have been presented by the Crown to the church of Bracton in the Archdeaconry of Barnstaple, of which church Odo de Bracton was perpetual vicar. The combination of these names is rather significant, more particularly if it be borne in mind, that William de Radleghe was subsequently Treasurer of Exeter Cathedral, of which Henry de Bracton became Chancellor. When and under what circumstances William de Radleghe was advanced to the office of Justiciary at Westminster is not known, but we find him acting as a Justiciary of the Bench in 13 H. III., and he is recorded as taking fines in that capacity so late as 19 H. III. After that time we find him employed by the King in 21 H. III. as his commissioner to open the Parliament, when by his eloquence he persuaded the Barons to grant the King a subsidy of a thirtieth in return for his confirmation of the Charters granted by him during his minority. Four years afterwards, having meanwhile been appointed a canon of St. Paul's, London, and a canon of Lichfield Cathedral, he was elected to two bishoprics in 1239, that of Lichfield and Coventry, and that of Norwich. He decided to accept Norwich, and was consecrated to that See. Almost immediately after this event the monks of Winchester

elected him their Bishop in succession to Peter des Roches, who had been dismissed some time before from the King's service as Prime Minister at the time when Stephen de Segrave was ejected from the office of Justiciary of England in 16 H. III. (1234). Their election of William de Radlegh made him obnoxious to the King, who sought to force upon the Chapter of Winchester the election of William de Valence, the uncle of Queen Eleanor. A contest ensued thereupon between the King and the Chapter, which lasted for several years, but ultimately William de Radlegh with the aid of Pope Innocent IV. and of Boniface, Archbishop of Canterbury, overcame the King's opposition, but he failed to regain the King's favour. He died abroad at Tours in 1250. The manner in which Bracton speaks of William de Radlegh in Chapter XXIII., *De Corona* (fol. 144 b.), might induce the reader to suppose that William de Radlegh had been appointed Chief Justiciary in succession to Stephen de Segrave, as Bracton cites a case in which the King pardoned an act of homicide in a plea heard "*coram rege apud Windsore de quodam homine de Cocham coram W. de Ralegh tunc justitiario*" (vol. ii. p. 464). The phrase "*tunc justitiario*" in its ordinary acceptation might be here taken to mean "then Chief Justiciary." The Tower Roll, however, of 18 H. III. comes to our assistance on this occasion, as it contains the pleas heard before the King at Windsor in that very year in the presence of William de Radlegh and an associate judge, and we also know from other sources that final concords were settled before William de Radlegh as a "*justiciarius de banco*" in the next following year. It would thus appear that the justiciaries, who accompanied the King from place to place, and heard pleas brought *coram ipso domino Rege*, were, as already suggested, interchangeable with those who heard pleas brought *coram justitiariis in banco residentibus*, and that they were distinguished from the justices itinerant as being *per-*

petui, whereas the office of justice itinerant, as such, expired on the completion of each iter.

Bracton does not throw any light upon the exact period when the system of judges itinerant was established. The early records of the Exchequer show that there were justices itinerant in the reign of Henry I., and it seems to be the better opinion, that the regulations made at the Great Council of Northampton in 22 H. II. (R. de Hoveden, ii. p. 87) were not made on the first institution of the office of justice itinerant, but were drawn up with a view to secure a more systematic discharge of its duties, which were fiscal as well as legal. The realm of England was on that occasion divided into six circuits, on each of which were three justiciaries. Three years later the realm was partitioned at the Council of Windsor into four circuits, and a greater number of justiciaries were assigned to each circuit. This constitution of the legal circuits seems to have been maintained during the reign of Henry II., and during the greater part of his reign the justices itinerant held their circuits in the counties assigned to them once in each year. The duties of the justices itinerant were defined at the Council of Northampton above mentioned after a scheme previously devised under what is termed the assise of Clarendon A.D. 1166. (R. de Hoveden, ii. p. 87, Rolls edition). The authority of the justices itinerant as thus settled was amplified by slow and gradual steps under warrants or commissions, which they received from the Crown, and in pursuance of certain "capitula" or articles of inquiry delivered to them on each occasion before entering on their circuits. How great had been the advance made in this branch of our judicature in the reign of Richard I. may be gathered from a comparison between the articles drawn up at Northampton (A.D. 1176) and the form of proceeding established in the fifth year of King Richard I. (A.D. 1193) during his short visit to England after the captivity, which he had endured on his way home from

the Crusade (R. de Hoveden iii., pp. 262-267). A further advance may be observed in 10 Richard I. (A.D. 1198) when "capitula" somewhat different were issued (R. de Hoveden, iv., p. 61). Abuses, however, seem to have grown up in the system of justices itinerant in the reign of King John, as may be gathered from the Articles of the Barons, who petitioned for a further regulation of the judicial circuits, namely, that two justiciaries should visit every county four times in each year (Art. 8) for the purpose of holding recognitions concerning novel disseysine and the death of an ancestor and last presentations. Further they petitioned (Art. 42) that the justices, sheriffs, and bailiffs should be persons who knew the law of the land, and would take care that it should be observed. This latter provision was of the last importance, inasmuch as the justices itinerant were for the most part local notabilities, who were associated in the commission with a justiciary of the bench, and were selected not so much for their knowledge of the law as for their knowledge of the counties and of the circumstances of each locality. The petition of the Barons on both these heads was granted in the Great Charter of Liberties, A.D. 1215 (Articles 18 and 45). On the second re-issue of the Great Charter by King Henry III., in 1217, provision was made that in every county an assise should be held by the King's justiciaries once in every year (Art. 13), and a further provision was made that if any matters were left unfinished by them in a county, they might be determined by them elsewhere on the same circuit, and if they could not be determined on the circuit, they should be reserved for the justiciaries of the bench, and be there determined. Henceforth it would seem that the visitation of the justices itinerant for general business was septennial until the reign of Edward I. This general complaint of the want of knowledge of the law on the part of the justices itinerant throws considerable light on the motives, which induced

Bracton to undertake his great work, which he commences by censuring the frequent audacity of foolish and unlearned men, who ascend the judgment seat before they have learnt the laws, and in the *Treatise de Actionibus*, Ch. VIII., warns the justices against accepting bribes, which pervert the straight line of judgment.

It would appear that prior to the provision of the Great Charter granted by Henry III. in 1217, that in every county there should be one assise held in every year by the justiciaries of the Crown for the determination of certain classes of civil suits, a practice had grown up of issuing from time to time commissions to justices of gaol delivery. Accordingly we find that Bracton recognises three classes of justices itinerant, namely, the ancient normal class of justiciaries travelling from county to county empowered under a general warrant to hear all pleas, and two new classes of justiciaries, namely, justices empowered to hear special pleas and to hold assises of novel disseysine, and of the death of an ancestor, and justices of gaol delivery, sometimes for one singly or for two and not more (fol. 161). The writ of general summons to attend the county court before the justices itinerant (fol. 109 b.) will be found to retain in Bracton's time the bishops and barons as in the reign of Henry II., but it also includes, in addition to the knights and freeholders and the representatives of hundreds and of townships, a new constituency, namely, the representatives of boroughs; the justices are also empowered under this general writ¹ not only to hear all the pleas of the Crown, which have emerged since their last Iter, but also all civil suits sent down to them by the justices of the bench at Westminster. No allusion, however, is made in the writ to

¹ The same kind of writ of general summons was in use in 17 H. III. Series, i. p. 395), and is cited in Professor Stubbs' useful work on *Select Charters*, p. 349.

any articles or *capitula* to be administered to the hundredors, such as are recited by Bracton in the opening chapters of his treatise de Corona.

The treatise de Corona, as already stated in the Introduction to vol. i., p. xv, is entitled "De Itinere Justitiariorum in MS. Rawlinson C. 160, in which there is also a MS. head-note to the same effect continued throughout the treatise. It may be observed that the MSS. of Bracton for the most part are without head-notes, or, if they exhibit any, the head-notes are in a handwriting much more modern than the text. This treatise commences with directions how to hold a circuit court, and the mode in which Bracton cites the practice of Martinus de Pateshull to deliver a charge (et proponi solent verba ista per Martinum de Pateshull),¹ immediately after the writs have been read and before proceeding to any other business, is suggestive that this part of the treatise was composed during the lifetime of that eminent judge, whose death is placed by some persons in 14 Henry III., but according to Bracton's authority could not have happened before 16 H. III. (vol. i., p. 399). The Editor was disposed to think, when he prepared the Introduction to the first volume, that the whole of the treatise de Corona might have been written by Bracton whilst Martin de Pateshull was still alive, but two objections have since presented themselves to this view. One of them arises on the pardon granted by King Henry III. to the man who slew a burglar breaking into his house, which, as narrated by Bracton (p. 464), is without a date, but has been ascertained by the examination of the Plea Roll of 18 H. III. to have been granted at Windsor in that year; the other is the reference in the Chapters of the Eyre, to which we shall presently allude,

¹ In the fifth treatise of the fourth book, entitled "De Assisa Utrum," Bracton uses the expression "sicut

" primo fuit observatum tempore M. de Pateshull," which implies that Martinus was at that time dead.

to the visit of the King to Gascony, which took place in 1243 (27 H. III.). The latter objection is not of a paramount character in the Editor's opinion, as Bracton in arranging his treatises in their present order would have reasonably inserted the most recent change in the Chapters of the Eyre, and there is good reason for supposing that his work was not completed in its present form before 1257. On the other hand the reference to the pleas heard before the King at Windsor (p. 464) has all the appearance of being an original part of the text and not a side-note, which has since been interpolated. Bracton then goes on to describe an order of proceeding, in which are discernible the germs of the grand jury and the petty jury. After the charge has been delivered by the senior justiciary, the justiciaries are to withdraw into a private room with six or more of the greater men of the county, who are called "Busones comitatus." This anomalous appellation of "Busones" is not to be met with elsewhere than in this passage of Bracton, and it is a matter of fair consideration whether it is not a miswriting for "Barones." Sir Henry Spelman says that he had seen a MS. in which the word was written "Barones." The Editor has met with several MSS. which exhibit "Barones," but "Buzones" is the reading of MS. Rawlinson C. 160, which does not generally go astray, and Bracton cites the word, as if it were a slang term or a provincialism. On the latter supposition it has some countenance in the Flemish word "boss," which signifies a big burly fellow, and the word boss is used amongst workmen in England to signify their headman or director. On the other hand the phrase "Barones comitatus" may have been the counterpart of the corresponding phrases of Barons of the Cinque Ports and Barons of London, the former of whom are mentioned by Bracton in the writ which follows immediately the Chapters of the Eyre, and the latter term was used down to the reign of Edward VI. to denote the leading citizens of London.

After certain exhortations have been addressed to the leading men of the county, the justiciaries are to address themselves to the serjeants and bailiffs of the hundreds, who are to elect four knights from each hundred, and these knights are in their turn to elect twelve knights or freeholders, and to present them to the justiciaries, before whom they are to be sworn to speak the truth. Thereupon the justiciaries are to exhibit to these hundredors certain "capitula" or heads of inquiry, familiarly termed "Chapters of the Eyre," to which the hundredors are bound to make a return, as the object of the inquiry is to ascertain what, if any, encroachments have been made on the rights of the Crown since the last iter, and what, if any, abuses have crept into the administration of the counties by the sheriffs. These inquisitions, however, on the part of the justices itinerant were capable of being much abused, and were in some cases so much abused in the reign of King John, that the people dreaded the visitations of the justices itinerant, and remonstrated against their taking place oftener than once in seven years. In this fact we have another key to the motives, which induced Bracton to undertake his great work, namely, to supply a knowledge of the law to the justices itinerant, at the same time as to enforce upon them a sense of duty; and further, as we shall have occasion to point out in a future volume, to supply to the justices of assise, who under the Second Charter of Henry III. were to visit each county once in every year, a competent knowledge of the law in the subjects of novel disseysine, the death of an ancestor, and other subjects, which Bracton treats of in his fourth book. The Chapters of the Eyre, such as we find them in the printed edition of Bracton, were administered to the hundredors with little variation during the reign of Henry III. (*Annals of Burton*, Rolls edition p. 337), but the scribe of MS. Rawlinson C. 160 has inserted after the Chapters of the Eyre, which alone find a place in the printed book of 1569, two other sets of Capitula, which are of considerable interest; the first of

these sets is headed "Item nova capitula de tempore regis Edwardi, filii regis Henrici tertii," and the second "Item capitula tangentia prima statuta Westmonasteriensia in anno regni regis Edwardi filii regis Henrici tertio."

These Capitula form no part of the original work of Bracton, but the insertion of them in this MS., with the special headings prefixed to them, serves to clear up some historical difficulties, which appear to have beset the Record Commissioners, when they published the Capitula Itineris as "incerti temporis" in 1811. On the arrival of King Edward I. in England, which did not take place until very near the end of the second year of his reign, (2 August 1274), one of his first acts was to issue a commission of justices itinerant to inquire into the state of the Royal demesnes and of the rights and revenues of the Crown, and also into the conduct of the sheriffs and other officers and ministers, who had defrauded the late King and grievously oppressed the people, and we know from the Annals of Winchester, Rolls edition, p. 113, that the Parliament, which had assembled at Westminster immediately upon the death of Henry III., resolved "quod nulli sint justiciarii itinerantes usque ad adventum principis, sed de Banco," in other words, that "no justices should proceed on an iter until the arrival of the King, but that the sittings of the justices in Banco should be maintained." King Edward I. accordingly on his arrival in England issued commissions of justices itinerant on 11th Oct. 1274 for the whole kingdom, according to the Patent Rolls for that year, and the commissions in certain cases, as appears from the print of them prefixed to the Hundred Rolls of that year, published by the Record Commissioners in 1812, contained only thirty-five articles, whilst the returns from some counties exhibit answers to a greater number of articles. This anomaly is explained by the first set of articles in MS. Rawlinson C. 160, which are entitled "Nova capitula de tempore regis Edwardi filii regis

"Henrici tercii," and which contain forty-one articles. The six additional articles are also found inserted in three MSS. of the Harleian Collection in the British Museum. The result of the returns made to these articles was the enactment of the Statute of Westminster the First (3 Edward I.). This statute led up to a new *iter* and to further articles of inquiry, of which the origin seems not to have been accurately known to the Record Commissioners, who have published them also without any date as "capitula incerti temporis." They are entitled in MS. Rawlinson C. 160, "Capitula tangencia prima statuta Westm̃ in anno regni regis Edwardi filii regis Henrici tercio." One main object of these articles was to ascertain whether the provisions of Westminster the First, more particularly those which prohibited certain distrains of cattle, were observed. These articles have never before been published in their original form. They are in fact the articles, which were delivered to the justices itinerant in 6 Edward I., and not the previous articles of 2 Edward I. as suggested in the Report of Mr. Illingworth, the Deputy Keeper of the Tower Records, in 1812. Mr. Illingworth, as is well known, was both a learned and a painstaking officer, and no reflection can attach to him for negligence of research in this matter, as the MS. Rawlinson C. 160 was not accessible to him. The "Capitula Coronæ et Itinerum," which the author of *Fleta* has collected in Chapter 20 of his work, are an "olla podrida," and throw no light on the subject.

Bracton in his third chapter commences his discussion of crimes with crimes of a public character against the King's Majesty, such as high treason, the crime of forgery, the fraudulent concealment of treasure-trove, the taking of wreck on the sea, all of which may be said to concern the person of the King. He next proceeds to consider other crimes, which touch both the King himself, inasmuch as his peace is thereby broken, and also the persons of the King's subjects, such as homicide, rape, cutting and

wounding, murder, or in other words the slaying of a man when none is present, the term "murdrum" having been invented in the time of Canute the Dane, mayhem, breaches of the peace by false imprisonment, or by robbery, arson, suicide, all of which are felonies. All such acts Bracton classes under the head of greater crimes, which may entail capital punishment or mutilation or exile, according to their comparative gravity.

He then proceeds in Chapter XXXVI. to treat of minor crimes, which are the subject of civil actions, one of the most serious heads of which crimes was the wrongful distraint of cattle, which had become a great engine of oppression in the reign of H. III. It had been a special object of the Statute of Westminster the First to prohibit distraints being made upon animals employed for the waynage of lands, and upon sheep, and the articles of inquiry issued in 3 Edward I. (Appendix II., p. 603) will be found to be specially directed to ascertain, if the provisions of that Statute on this subject were observed. The latest case cited in this treatise as having been heard before the King at Westminster at the Exchequer, in 46 H. III., is a complaint of wrongful distraint brought against Peter of Savoy, the uncle of the Queen, on behalf of certain of his tenants against his servants who had levied a tax (talliage) upon his tenants, and had distrained their cattle. Peter of Savoy avowed the act of his servants, and thereupon an inquisition was directed to be made, whether the talliage was justly levied or not. The reference to the case of Peter of Savoy has caused some perplexity in fixing the time when Bracton composed his work, but the better opinion would seem to be that the case of Peter of Savoy was originally a side-note, which has been interpolated into the text to illustrate a principle of law as applied by the highest court.

The omission of all mention of a "*Justiciarius Angliæ*" by Bracton, although in the treatise de *Actionibus* (p. 209), and again in the treatise de *Corona* (p. 524), he

recites writs directed from the King to the Viscount, which speak in alternative terms of "us or our Chief Justiciary," is not without significance, as regards the time within which Bracton's work was completed. It has been a subject of controversy whether, after the enforced retirement of Stephen de Segrave from the office of Chief Justiciary in 18 H. III., any successor to him was appointed under the title of "Justiciarius Angliæ." The better opinion would seem to be that no justiciary received the appointment of "Justiciarius Angliæ" by Letters Patent after the retirement of Stephen de Segrave, until the appointment of Hugh Bigot in 42 Henry III. (1261), so that there would be an interval of twenty-four years during which the office of Chief Justiciary would be, as it were, in commission, and its duties would be discharged, in respect of all formal business, by the senior justiciary, who was in attendance on the King. Allusion has already been made to this circumstance, in connexion with the attendance of William de Radleigh on the King, in 18 H. III., when Bracton speaks of him as "tunc justiciarius." Mr. Foss endeavours to establish an order of precedence at this time amongst the justiciaries in accordance with the order, in which their names are recited in certain commissions of assise, but he is sensible that his theory does not meet all the difficulties of the case. The probability is that when they sat *in banco* they took precedence of one another in order of seniority, and that they attended on the King to hear pleas *coram ipso Rege* according as it pleased the King to summon them. It is not immaterial to remark that Bracton designates all the justiciaries of the Aula Regis as "Justiciarii Capitaless," so that the summons of the King to a justiciary of the bench to attend upon him personally to hear pleas *coram ipso Rege* may have conferred on the justiciary an additional dignity, analogous to that which a Puisne Judge of the Courts at Westminster acquires in the present day, when he is constituted a

member of the King's Privy Council. There is, however, a passage in the *Annales de Wintonia*, A.D. 1256, which casts, as it were, a side light on the subject, "*Erant justitiiarii itinerantes apud Wintoniam post festum Sancti Hilarii, quorum Robertus de Wallerand fuit capitalis.*" The phrase "*capitalis*," as here used, may either mean that Robert de Wallerand was at the head of the commission, or that he was a member of the highest order of justiciaries. King Henry III. during the long interval of twenty-four years, during which he personally presided over the administration of the law without a Chief Justiciary, and during part of the time without a Chancellor or a Treasurer, seems to have had the assistance of several very able justiciaries. The Barons, however, remonstrated frequently against this personal exercise on the part of the King of an immediate control over the judiciary of the realm, as unconstitutional, and demanded the revival of the office of Justiciary of England. It may be presumed, therefore, that the Barons did not feel the same confidence in the administration of justice, when a court might be constituted of members selected at the caprice of the King, as when a "Justiciary of England" could stand between them and the Crown.

How far the Barons had reasonable grounds for distrusting the King in his choice of justiciaries is a point somewhat obscure in the history of the reign of Henry III., but Bracton, as a representative of the justiciaries *de banco* during the interval between 18 Henry III. and 51 H. III., leads us to suppose that the administration of justice had not lost anything by the ejection of Stephen de Segrave from the office of "Justiciary of England" in 18 H. III., and by the non-appointment of a political Chief Justiciary, until the Barons obtained the upper hand over the King at the Parliament of Oxford (42 H. III.); nor again after Hugh le Despenser, the nominee of the Barons, fell on the battle field of Evesham by the side of Simon de Montfort, until the separation of the courts at West-

minster into three high courts, two of which had henceforth each its own Chief Justiciary, and the third its Chief Baron. Sir Edward Coke, in his preface to his Ninth Report, styles Bracton "*Curia de Banco Judex*," whilst Lord Ellesmere, in his argument on the *Post Nati* (State Trials, ii. 693), describes Bracton as Chief Justice. Both of these statements may be reconciled by supposing that the term "*Justiciarius Capitalis*" was at this time applied in a different sense from that, which it bore before 18 H. III., and in fact that the constitution of the Courts of King Bench and Common Pleas under distinct Chief Justices in 52 H. III. was founded on a practice of some standing, in recognition of which the patent of Robert de Brus granted to him in that year, as head of the King's Court, designated him for the first time as "*Capitalis Justiciarius ad placita coram Rege tenenda*," in the place of the ancient title, under which the President of the *Curia Regis* had been designated as "*summus Justiciarius totius Angliæ*."

The Editor has been unable, in his survey of Bracton's work down to the end of the *Treatise de Coronâ*, to discover any leanings of partiality either towards the King or towards the Barons, unbecoming the equity of the judicial character. Whilst the administration of justice was under the direction of Hubert de Burgh, as Chief Justiciary of England, which lasted from the grant of the Charter of Liberties of King John down to the sixteenth year of the reign of Henry III. (1215-1232), although Hubert de Burgh administered justice with a strong hand, he respected the spirit of the Great Charter and of the Charter of the Forest, and thus we find Bracton quoting "the Charter of Liberties" as furnishing the rule, by which the coroner was to govern his inquest in cases of homicide (p. 283). With the advancement of Peter des Roches, who had been Justiciary of England in the reign of King John immediately before the Great Charter was signed at Runimede, to the post of Prime Minister in 1232, and the appointment of Stephen de

Segrave to the office of Justiciary of England in the same year, the difficulties between the King and the Barons may be said to have commenced. It here becomes interesting to see how Bracton deals with the law of high treason, the greatest of public crimes, which he discusses first in the order of capital crimes in Chapter III., de Coronâ. Having laid down broadly the duty of every subject of the Crown (quilibet de populo) to denounce the crime of high treason, he proceeds to consider before what court it should be tried. "And then," he says (p. 265), "it is to be seen, who can or ought to judge, and it is to be known, that it is not the King himself, otherwise he would be plaintiff and judge in his own cause in a judgment of life or members or disinherittance, which would not be the case, if the complaint were made on the part of others. Likewise the justiciaries? No! since the justiciary represents the person of the King, whose post he fills. Who therefore shall judge? *It appears without prejudice to a better opinion*, that the court and the peers shall judge (quod curia et pares judicabunt), lest misdeeds should remain unpunished, where there is peril of life or members or disinherittance, since the King himself ought to be the plaintiff in the action." This opinion of Bracton, which he advances with great caution, marks an epoch in the history of our law of high treason. In Glanville's time there was no other mode of trial of high treason than by wager of battle (L. xii. c. 1), except in the case where the party accused was above sixty years of age or maimed, in either of which cases he was bound to submit to the judgment of God by the ordeal of water or of hot iron; but since Glanville's time a cardinal principle of the feudal law, which is embodied in the so-called Laws of Henry I.¹ (xxx. 3), had received a

¹ This compilation, which was probably the work of Roger, Bishop of Salisbury, Chief Justiciary in the reign of Henry I. (1107-1135), contains the germs of an intelligent system of legal procedure, which

solemn recognition in the Great Charter of King John, namely, the "*Judicium Parium*," the right of being judged by one's peers. It was a maxim recognised in the "*Leges Henrici Primi*," "*quod unusquisque per pares suos judicandus est*." On the other hand, the Great Charter of King John provided in the 21st article that "*comites et barones non amercientur, nisi per pares suos, et non nisi secundum modum delicti*," but this law, strictly speaking, only applied to cases of trespass, not of felony. Bracton has no hesitation in laying down the law on the subject of trespass in accordance with this provision of the Great Charter. "But if," he says, "the trespass has been grave and close on disinherittance, so that it may bring on ransom (*redemptionem*), there the peers of the accused ought to be associated with the justiciaries, lest the King himself by himself or his justiciaries without any peers shall be both the plaintiff and the judge" (p. 267). Whilst Bracton affirms this rule of procedure as being undisputed in the case of trespass against the King, he commends its adoption on parity of principle, in the case of high treason, thus leaning, as it were, in the matter of procedure towards the Barons. On the other hand, as regards the jurisprudence of the crime of high treason, he adopts the whole doctrine of the Roman Law as to what constitutes the "*crimen læsæ majestatis*," as well as the collateral penalties attached to the crime, such as the confiscation of the traitor's property on conviction, and the incapacity of his issue to inherit. So far he may be said to redress the balance in favour of the Crown. Further, in discussing the crimes of concealing treasure-trove and appropriating wreck of the sea, he rests the Crown's right in both cases upon the principles of the Roman law, that treasure-trove and wreck are "res

has been the groundwork of English | the permanence of our legal in-
civilisation, and is the secret of | stitutions.

"nullius," and as such devolve to the Crown in accordance with the law of Nations (*jus gentium*), which has superseded the right of the finder under the law of Nature (*jus Naturale*).

After discussing the capital crimes which touch the person of the King alone, Bracton proceeds (Chapter IV.) to deal with the greater crimes, which touch both the King himself, whose peace is broken, and the person of the subject, who is slain or injured; and here indeed, in dealing in the first place with the law of homicide, Bracton's intimate acquaintance with the Canon Law has enabled him to treat the subject from the highest point of legal science then attainable. Thus, in defining the various species of homicide, having put aside the discussion of spiritual homicide, he divides corporeal homicide under two heads, as being committed *linguâ vel facto*. "*Linguâ*," he says, "*tribus modis, scilicet, præcepto, consilio, defensione sive tuitione; facto, quatuor modis, scilicet, justitia, necessitate, casu et voluntate.*" These distinctions were familiar to the canonists of the twelfth and thirteenth centuries, for the crime of homicide was intimately connected with the sin of homicide, and it was on the ground that homicide in certain cases was a mortal sin, that the judge was held not to commit sin in condemning to death a man guilty of such homicide, and in ordering his officers to slay him.¹ The question of necessity only arose, according to Bracton's view, where the homicide was inevitable, when "a man slays another man without any meditation of hatred, in fear and pain of mind, in delivering himself or his property, where he could not otherwise escape." Here again Bracton stands upon the same platform with the canonists with regard to homicide committed casually (*casu*). Bracton follows the same line as the canonists in distinguishing the circumstances under which it was committed (*utrum quis dederit operam rei licitæ vel*

¹ *Decreti Pars. ii., Caus. xxiii., Qu. v.*

illicitæ), holding that in the course of lawful employment the act of homicide might be excusable, whilst in the case of unlawful employment the act of slaying would be culpable; and again as regards the former case, although the work on which the person was engaged should be lawful, still if due diligence to avoid the act of homicide has not been used, blame will be imputable (Decretal V. tit. xii. De homicidio voluntario, vel casuali).

Although Bracton's theory of penal law, as applicable to the crime of homicide, may not be regarded in the present day as perfect, it will be found that he has laid the foundations upon which our English system of criminal jurisprudence has been built up, and still rests, and when his treatment of the subject of the punishment of crime is compared with the treatment, which the same subject has received in Glanville's treatise, the progress of legal science in criminal matters, during the quarter of a century which intervened between the reigns of Henry II. and of Henry III., is little short of marvellous. In explanation of this fact it must be borne in mind that it was precisely during this interval of time that the body of Canon Law, known as the *Breviarium extravagantium*, containing many older Decretals which Gratian had not collected, together with the later Decretals from Alexander III. to Clement III., was compiled by Bernhard of Pavia. This Breviarium was framed after the model of the Code of Justinian, and it was taught in the law schools of Bologna, together with the Decretum of Gratian. The work of the learned Provost of the Church of Pavia, although it has been cast into the shade by the subsequent and more complete Digest of the Canon Law, known as the Decretals of Gregory IX., which was compiled in 1234, was the first collection which received the stamp of the papal authority, and Bracton must have been familiar with its contents, for his language is frequently framed after the Decretals contained in it

(Decretal V. tit. xiv. § 2, De Clericis pugnantis). Thus he lays down the law as to the punishment of accessories to an act of homicide in perfect accordance with the principles embodied in the famous Decretal of Alexander III. addressed to the Bishop of Exeter on the occasion of the homicide of Archbishop Becket of Canterbury: "Several persons," he says, p. 279, "may be culpable of homicide, just as one person; as, for instance, if several persons have quarrelled amongst themselves in a conflict, and some one has been slain among such persons, and it does not appear by whom nor by whose blow, all may be called homiciders, both those who struck him and those who held him with an evil intention until he was struck. Likewise also those who have come with an intention of slaying, although they did not strike. Likewise also those who have not slain, nor had an intention of slaying, but came that they might give counsel and help to the slayers, although their violence may happen to be repelled. Likewise not only is he liable who strikes and slays, but also he who advised how to strike or slay, because since they are not exempt from blame, they ought not to be exempt from punishment." Bracton's exposition of the law on this subject is evidently framed upon the Decretal of Alexander III. (Decretal V. tit. xii. c. vi.), and it must be remembered that in the twelfth and thirteenth centuries the Roman Pontiff, when pronouncing his opinion on such a subject, was the judicial oracle of Christendom. Professor Güterbock, of Königsberg, whose learned work on the relation of Bracton to the Roman law has already been referred to in the Introduction to the first volume, signals out many propositions of Bracton in matters of criminal law, which have their counterpart in the earlier Decretals of the Roman Pontiffs. The University of Oxford, with which an oral tradition connects Bracton as a teacher, or at least a high graduate in the schools of law, was not likely to lag behind the Universities of Pavia and of



Bologna in studying the writings of the canonists on the subject of crimes, and Bracton had evidently acquired a familiarity with the most advanced teaching of the canon law on that subject, which enabled him to develop a well considered scheme of criminal jurisprudence for his own country. So much for the sources whence Bracton derived his principles of criminal law, but when he comes to the procedure of the courts, and the execution of the law itself, he takes his stand on the established customs of the realm of England. Thus, for instance, he follows up his chapter on the various species of felonies against the Crown, with a chapter on the office of the coroner concerning homicide, and here arises a question whether the so-called statute of Edward I. on the office of the coroner was drawn up after the model of Bracton's Chapter V. of the *Treatise de Coronâ*, or whether Bracton's chapter was framed upon the so-called statute.¹ The identity of Bracton's chapter with the so-called statute of 4 Edw. I. is so striking, that many writers have laid stress upon this fact, as an argument that Bracton's work was not completed in its present form until the early part of the reign of Edward I., more particularly as no MS. of Bracton's work is known to exist of a handwriting earlier than that reign. MS. Rawlinson C. 160, for instance, which the Editor has considered not to be surpassed by any other MS. in the accuracy of its text, was written some short time after 4 Edward I. But if Bracton's work

¹ The Editor is disposed to agree with the Hon. Daines Barrington in regarding the document *De Officio Coronatoris* as a body of instructions for the coroners, and not properly speaking a Constitution. It is not unlikely, that these instructions were drawn up in pursuance of the Statute of Westminster the First, ch. x. (3 Edw. I.), which established certain reforms in the election of the coroners. As these

instructions for the coroners have been retained in the last revised edition of the Statutes of the Realm, published by authority, they may, without impropriety, be spoken of in the present day as a statute. The text of these instructions has been printed amongst the Statutes of the Realm, published by the Record Commissioners in 1812, after the text of MS. Harleian, No. 667, fol. 222 b. in the British Museum.



was not completed in the form, in which it is presented to us in the printed book of 1569, until Edward I. had ascended the throne, it was completed by other hands than those of Bracton himself, as there are documents in the archives of the Dean and Chapter of Exeter Cathedral, which show that a mass for the repose of the soul of Henricus de Bracton was being daily said in that cathedral before Henry III. had ceased to reign. It is difficult to resist the conclusion, that the Statute de Officio Coronatoris (4 Edw. I.) was framed upon the model of Bracton's Chapter V. de Corona, and not the converse, and that Bracton's chapter has embodied the common law^{*} amended in certain matters of procedure by the provisions of the Charter of Liberties.

Thus under the common law, as it existed in the reign of Henry II., the coroner had no power to allow a person accused, either as a principal or an accessory, in a case of homicide to remain out of prison on bail to await the iter of the King's justiciaries. In Glanville's time, however, a writ was issuable in such a case to release the party accused on¹ bail (Lib. xiv. c. 3.) as a matter of royal favour (*ex regie potestatis beneficio*). Meanwhile great abuses had attended the exceptional issue of such writs, and during the reign of King John large sums of money had come to be required and to be paid for the grant of a writ "*De odio et atya*," as it was termed, in other words for a writ directing the viscount to inquire, whether the charge of homicide had not been brought through enmity and spite. The Charter of Liberties of King Henry III. (Article 36) endeavoured to remedy this mischief by providing that such writs should be granted gratuitously, and Bracton, whilst he still maintains the limitation of the coroner's discretion as in olden time, takes care not merely to cite the provisions of the Charter of Liberties in Chapter V., § 3, but in Chapter VIII., § 7, to give the form of the writ itself, which was to be addressed to the viscount on such occasions. He adds, that a writ for an inquest of this

kind, which was grantable by the favour of the King (*de gratia domini regis*), ought to be denied to nobody, lest innocent persons should be detained a long time in prison. The inquest in such cases was to be conducted by the viscount, with the assistance of twelve good and loyal men of the county, and if it was favourable to the accused party, he might be released on bail to come up for judgment before the King's justiciaries, when they should next visit the county. In continuing his discussion on the course of procedure in cases of homicide and other categories of crime, Bracton treads on ground, which is purely English, namely, on the customs of the realm or of the counties as known to himself, or upon the decisions of the King's justiciaries. We go back with Bracton on the subject of harbouring fugitives from justice to the laws of King Edward (the Confessor), and to the practice of the Anglo-Saxon frankpledge (Chapter X., § 2); we travel back with him on the special topic of murder (*murdrum*) to the laws of Canute, King of the Danes, where he initiates us into the mystery of Englishery (Chapter XV., § 2); we are introduced by him on the subject of the rape of women to a law of King Athelstane, of which no other record has been preserved, and to certain singular laws of the Franks and the Anglians on the same subject, and further, to the origin of the customary law, which was received in his time, under which rape might be condoned by the woman consenting to marry her ravisher. This custom he traces back to the Franks in the time of King Robert under circumstances of romance, for the narrative of which he has evidently been indebted to some ancient French Chronicle (Chapter XXVIII.). Bracton further explains all the ceremonial details of the Wager of Battle (Chapter XXI.); the process by which a criminal is compellable to abjure the realm, if he has sought sanctuary in a church (Chapter XVI.); the form of surrender to the Court of Christianity of a clerk, who has been cast into prison by the

secular power for any crime, and his subsequent degradation by the bishop, and in case of his apostacy his committal to the flames by a lay hand, of which he cites an example in the proceedings of the Council of Oxford under Stephen Langton, Archbishop of Canterbury (Chapter IX.). In fact Bracton enables us to survey the whole field of the criminal law of the realm, and we discern, under his guidance, how its procedure worked independently of a Crown prosecutor, the mainsprings of its action being a local centre in every county, and the connecting links being the periodical visits of the King's justiciaries. Even in the case of homicide, except in instances in which hue and cry had been immediately raised, no one could prosecute, who was not a kinsman of the person slain, and it was only in cases where the prosecutor had died or deserted the wager of battle, that the Crown was accustomed to interfere *ex officio*. Here, however, as the King did not fight with his subjects, nor had any champion but the country, battle did not ensue, but recourse was had to the country (*ad patriam*), in other words, the case was sent before a *jurata patriæ*, and was determined by its verdict.

A brief allusion has been made to the privilege of Englishery, which deserves notice as being a link, which connects the mediæval system of personal law, founded on race, with the modern system of territorial law, which is universally accepted in Europe outside the Turkish Empire. The crime of murder, as distinguished from simple homicide, was the slaying of a man when no one was present, who could raise the hue and cry, and could speak from sight or hearing as to the slayer or his coadjutors. Bracton deals with this question in Chapter XV. According to the Anglo-Saxon laws in all cases, where a man was found slain, and no one had raised the hue and cry in pursuit of the slayer, the township, where the man was found slain, was liable to be amerced. Bracton traces the origin of the distinction between the homicide of an

Englishman committed under such circumstances, and the homicide of a foreigner, to the time of Canute the Great, when a fixed sum was settled between the King and the Barons as payable by the township, if the murderer should escape after he had slain a Dane. It would appear that in Bracton's time a practice had been established in the interests of the townships, and with a view to restrain the arbitrary power of amercement at the discretion of the King's justiciaries, that in all cases of murder it should be presumed that the person slain was Frank-born (Francigena), unless Englishery was proved. Further Bracton proceeds to enumerate a variety of cases in which the Anglo-Saxon law of murder was no longer held to be applicable to the townships, and, in illustration of the sacredness of local custom, he observes that since in different counties presentments of Englishery are made in different ways, it will have to be inquired on every circuit from the commencement, what is the custom of presenting Englishery. Here we have an illustration of the peculiar character of English jurisprudence, under which a new law has been from time to time grafted upon an old stock, instead of the old stock being rooted up and a new law planted, which might wither away before it could strike root.

The subject of punishments has not been overlooked by Bracton. He warns the judge "to keep in mind" that nothing should be done either more harshly or more remissly than the cause requires. For he ought not to affect the vain boasting either of severity or of clemency, but he should determine with a well weighed judgment according as each thing demands. In lighter cases he ought to be more lenient towards leniency. But in graver punishments he should follow up the severity of the laws, tempered with a certain benignity. And punishments are rather to be mitigated than exasperated," Ch. VI., f. 105. And further, in order that the judge should not be at a loss how to discriminate between different shades of criminality, Bracton has

brought together all the learning of the Roman jurists upon the subject of punishment in terms very much akin to those of the Digest, l. xlviii., De Poenis, tit. xix. § 16. "Acts are punished," he says, "such as thefts, " homicides; *writings*, such as false and infamous libels; " *designs*, such as conspiracies. But these four ¹ kinds are " to be considered from seven points of view, the cause, " the person, the place, the time, the quality, the quantity, " and the event. The *cause*, as in the case of a master " or a father, unless the acts exceed moderation, because " they seem to be applied for amendment, and not for " punishment, and a man is punished, when any one is " struck by a stranger through anger. The *person* is " doubly considered, of him who has done the act, and " of him who has suffered it, for serfs are punished on a " different scale from free men for the same actions, and " differently in the case where one has struck one's lord " or one's parents, than where one has struck a stranger; " also where one has struck a magistrate, than where one " has struck a private person. And in a similar manner " regard is to be paid to age. *Place* causes the same act " to be a theft or a sacrilege, and accordingly the punish- " ment is greater or less. *Time* distinguishes the robber " from the thief, and the thief by day from the thief by " night. *Quantity*² distinguishes the thief from the cattle- " lifter, according as the theft is greater or less, as if a " person shall have stolen a sow he is a thief, and if he " has stolen a herd of swine, he is a cattle-lifter. The " *event*, as if with design and certain purpose a person

¹ Bracton has omitted the category of *Dicta*, which is mentioned in the Digest as the fourth element of crime.

² Bracton has also omitted the illustration of "Qualitas," which is given in the Digest, "*Qualitate*, " cum factum vel atrocius, vel levius " est, ut furta manifesta a nec mani- " festis discerni solent, rixæ a gras-

" saturis, expilationes a furtis, petu- " lantia a violentia." It is possible that Bracton has designedly omitted the illustration of "Quality" given in the Digest, inasmuch as the English distinction of *furtum manifestum* from *furtum non manifestum* (ch. xxxii., § 2.) has no affinity to the Roman distinction.

“ has done an act, such as homicide, or if eventually, as
 “ above, and accordingly it will be either a felony or a
 “ misfortune.¹

These are not speculative distinctions, nor are they traditions of the Theodosian Code, which may have been taught in the schools of York by Alcuin in the ninth century, and of which some outlines were preserved during the Anglo-Saxon period, and are traceable in the so-called laws of Henry I. It is to the University of Oxford, and to the teaching of Magister Vacarius, that the introduction is due of an intelligent jurisprudence, which proved itself capable of controlling that collision of jurisdiction amongst the different courts, which was the characteristic of England after the Norman conquest, as of every other feudal kingdom. The reign of Henry III., of which unfortunately the most valuable legal records are not readily accessible, was especially the period when a *modus vivendi*, as regards the due supremacy of the law, had to be established between the Crown and the Barons. But it would have been a vain enterprise to have sought to bring the decisions of the local courts under the review of the King's justiciaries, if care had not been taken to qualify the justiciaries for the proper discharge of their duties by furnishing them with means of ready access to a store house of juridical science, to which they might have recourse, where there was neither a previous judgment, nor an established usage to guide them. Under what circumstances Henricus de Bracton undertook the task is unknown to us. The fame of his work has somewhat suffered from the circumstance that the French tongue found its way into the statute law towards the end of the reign of Henry III.,²

¹ A collation of Bracton's Latin text with the Florentine text of the Digest, as now received, is suggestive that Bracton may have had before him on this occasion a dif-

ferent text from the Florentine text, see p. lxxxiii.

² The Statutum de Scaccario, which is generally assigned to 51 Henry III., is the earliest Statute in the French language.

and French also came to be the language of the text writers on the law, of which we find instances in Britton and in the fragment known as *Fet Assavoir*, published by Selden as an addition to *Fleta*.

Strange to say, the burial place of Bracton, like the burial place of the great lawgiver of the Jewish nation, and the burial place of the great lawgiver of the Roman people,¹ has remained unknown to us down to the present day, not by the design of his contemporaries as in the case of the Jewish and Roman lawgivers, but by the neglect of a forgetful posterity. Dr. Prince, in his learned work on the *Worthies of Devonshire* (Exeter, 1701), terminates his account of Bracton's life by the observation, "The precise time of his death I have no where met with, nor the particular place of his interment."

We will now proceed to draw aside the veil, which has hung so long before the tomb of Bracton.

There was in the thirteenth century in the Cathedral Church of Exeter an altar of the Blessed Virgin Mary, which stood in the nave on the south side of the entrance into the choir. It is beyond all reasonable doubt, that the mortal remains of *Henricus de Bracton*, the Chancellor of Exeter Cathedral, were interred in front of this altar, which was known, as long as it remained undestroyed, as "*Bratton's altar*." The altar is said to have stood under what was then the rood-loft, and is now the organ-loft. The Dean and Chapter of Exeter Cathedral have in their possession a deed of the year 1272, the effect of which is thus stated in the calendar of their documents, recently prepared by Mr. Stuart Moore:—"No. 1846, February 1272. Stephen the Abbot and the

¹ Livy, xl. c. 29, gives a curious account of the supposed discovery, A.C. 181, of the coffin of *Numa Pompilius* under the *Janiculum*. There were, however, no human remains within the coffin, and a companion

stone-chest, supposed to contain the writings of *Numa*, was found to contain MSS. of a character so contrary to the received religion, that they were burnt by order of the *Prætor*.

“ Brethren of the Abbey of Marmoustier of Tours to Sir
 “ John Wiger, knight. Grant of the manor of Thor-
 “ verton, rendering yearly 6*l*.¹ to two chaplains in the
 “ church of Exeter celebrating for the soul of Henry de
 “ Bratton, formerly chancellor of the same church ; and
 “ 3*s*. 6*d*. towards the light of the altar, before which his
 “ body is buried, the four marks formerly due to us for
 “ a pension out of the said church being reckoned in
 “ that sum, and an acknowledgment of the receipt of
 “ 400 marks (less 8) of the goods of the said Henry de
 “ Bratton, deceased, and the goods of the said Sir John
 “ Wiger.” There is also a deed in the archives of the
 Dean and Chapter, by which the above-named Sir John
 Wiger grants the manor of Thorverton to the Dean and
 Chapter of Exeter “ to have and to hold to the said dean
 “ and chapter and to their successors for ever, on their
 “ finding therefrom and appointing three chaplains,
 “ namely, two celebrating divine offices *at the altar of*
 “ *the Blessed Virgin in the nave of the church of Exeter,*
 “ *in front of which the body of Sir Henry de Bratton*
 “ *lies interred,* for the souls of the kings of England and
 “ of the same Sir Henry, and in the third place for my
 “ own soul and for the soul of my benefactors. Let each
 “ of the aforesaid chaplains receive annually sixty shil-
 “ lings.”² This last-mentioned document is numbered

¹ The annual payment of six pounds seems to have been increased by the dean and chapter to ten pounds before the endowment of Bratton's chantry was swept away. There are two entries in the *Valor Ecclesiasticus* respecting it, vol. ii. p. 294 and p. 297, from which it appears that John Hornebroke and John Solfyld, the priests of a chantry called “Bratton's Chantry,” received each of them ten pounds a year from the foundation of Sir John Wiger, knight.

The Abbey of Marmoustier was at the village of Saint Radegonde, about three-quarters of a league distant from Tours. It was founded in the fourth century by St. Martin of Tours, and a relic called the *Sainte Ampoule*, which contained the consecrated oil used at the coronation of the kings of France, was there deposited. A porch only of the abbey, one of the grandest abbeys in France, exists in the present day.

² The Latin text of the original deed is as follows : “Tenendum

No. 1848 in the catalogue above mentioned, and is under the date of A.D. 1276. It is not improbable that Sir John Wiger, who is mentioned in these documents, and whose name appears twice in the list of the sheriffs of Devon, was a kinsman of Henricus de Bracton, or at all events a neighbour. He resided at Broadwood-Wiger, and was patron of the advowson of that parish, which adjoins the parish of Bracton-Clovelly, between which parish and that of Bracton-Fleming there is a friendly rivalry, as to which is entitled to enrol Henricus de Bracton amongst its parishioners. The preponderance of opinion amongst antiquaries is in favour of Bracton-Clovelly, but the scale is weighted somewhat heavily in favour of Bracton-Fleming by the circumstance that William de Radleigh, who has been mentioned above as one of the most eminent of the justiciaries, who adorned the bench in the early part of the reign of Henry III., and who was a protector of Henricus de Bracton, was rector of the parish of Bracton-Fleming, and as such was brought into relations of intimacy with Odo de Bracton, at that time vicar of the same parish. Amongst the Patent Rolls of the fourteenth year of King John there occur Letters Patent of the date of 12 August 1212, under which the King presents William de Radleigh to the church (that is to the rectory) of Bracton, in the archdeaconry of Barnstaple, saving to Odo de Bracton the perpetual vicarage. This reservation of the perpetual vicarage to Odo de Bracton serves to illustrate an early stage of a practice, which became more prevalent in after times, and to which Bracton himself alludes, fol. 241 b., under which

" et habendum dictis Decano et
 " Capitulo et eorum successoribus
 " in perpetuum, inveniundo inde et
 " faciendo tres capellanos, viz.
 " duos divina celebrantes in altari
 " beate Virginis in navi ecclesie
 " Exon. coram quo corpus Domini

" Henrici de Bracton jacet huma-
 " tum, pro animabus regum Angliæ
 " et ejusdem Domini Henrici, et
 " tertium pro anima mea et bene-
 " factorum meorum. Quilibet is-
 " torum capellanorum annuatim
 " percipiat sexaginta solidos."

benefices in the gift of the Crown might be taxed by the Ordinary for the reasonable support of a perpetual vicar, whilst the other profits of the benefice accrued to the parson (*persona*), who was an ecclesiastic employed elsewhere in the service of the Crown, and not resident within the parish. It would be rash to assert that Henricus de Bracton was a kinsman of Odo de Bracton from the circumstance that each had an identical surname, but that Henricus de Bracton came from the parish, of which William de Radlegh was rector and Odo de Bracton was vicar, is highly probable. There is mention of Thomas, Robert, and Humfred de Bracton in the *Placitorum Abbreviatio*, f. 11, and we may be certain that William de Radlegh, who was treasurer of Exeter Cathedral before he was advanced to the higher preferment of the bishopric of Norwich and afterwards of the bishopric of Winchester, enlisted into the service of the Crown many intelligent clerks from the parish, of which he was the rector. The investigation, however, of the birthplace and genealogy of Henricus de Bracton may be fitly reserved for a future volume.

In accordance with the deeds above mentioned the memory of the burial place of Henricus de Bracton was kept alive for three centuries by a daily mass, celebrated at the altar of the blessed Virgin Mary in the nave of Exeter Cathedral. Further, the statutes of the cathedral make us aware, first, that Bracton's mass was the earliest mass celebrated every morning, and secondly, that the gates of the close of the cathedral were not allowed to be opened before the celebration of Bracton's mass. The statutes of Bishop Veysey¹ (1519—1551) have a

¹ Bishop Veysey or Voysey was twice Bishop of Exeter. His first appointment was in 1519, but he was ejected in 1551. Miles Coverdale was then appointed in his place, who was deprived on the

accession of Queen Mary, when Bishop Voysey was restored and occupied the see till his death in 1555. His name is one of the earliest names recorded in the Register of the Society of Doctors

special provision enjoining the members of the College of Annivellars¹ attached to the cathedral to attend and take part in the choral service of Bracton's mass. "Like-
 " wise the chanters, called Annivellars, are bound to be
 " present at divine service and to perform the choral
 " offices, to which they happen to be designated, and,
 " after the first morning mass, called '*Bracton ys masse*,'
 " is finished, to celebrate their masses successively and
 " in regular order, as has been hitherto accustomed to
 " be done."²

The provision as regards the cathedral close is found in a statute of Bishop Oldham (1511): "We order
 " further the gatekeeper of the close that he do close
 " the gates and wickets from the feast of Easter up to
 " the feast of St. Michael at nine o'clock, and from the
 " feast of St. Michael to the feast of Easter at eight
 " o'clock, and that he do not open them afterwards

of Law, who established themselves in Doctors Commons early in the sixteenth century. They were entitled at that time "the College of
 " Doctors and Advocates of the
 " Church of Christ, Canterbury." The earliest date in the Register Book of Advocates is 1511. The Register Book itself is in the Archives of Lambeth Palace, having been deposited there after the sale of the property of the College and the dispersion of its members.

¹ The word "annivellar" is a corruption of "annuallarius," which meant a chantry priest, who had no cure of souls, but was bound to chant annuals or anniversary masses on the obits of deceased persons. Mention is made of such priests in 30 Edward III., ch. viii. under the term "chantantz anuales" as distinguished from chappelleins parochiels, and also, in 2 Henry V.

st. 2. c. 11, as chapelains annuelers. Chaucer, in his *Canterbury Tales*, makes use of the word in his *Chanoines Yemanes* tale: "In London
 " there was a preest, an annuelere." The annivellars or chantry priests attached to Exeter Cathedral resided in a separate college, assigned to them within the close next adjoining the sub-deanery, and these buildings retained at the commencement of the present century the name of "the Annivellaries Col-
 " lege."

² Item cantaristæ vocati annivellari tenentur etiam interesse Divinis, officiaque subire choralia, ad quæ ipsos intitulari contingat, necnon post primam missam matutinam vocatam "*Bratton ys masse*," finitam, missas suas successive et ordinatim celebrare, prout hactenus fieri consuevit.

" without reasonable cause *before the morning mass of Bratton*, under a penalty to be fixed by the dean and chapter."¹ There was also a bell, which hung in the south tower of the cathedral, which was called "Bracton's bell," and which was rung every morning to summon the industrious population to hear Bracton's mass before they commenced their labours of the day. In the Fabric Rolls of the chapter from 1415 to 1416 there is the following entry:—"Timber for Bracton's bell, 14*d*." It is hardly necessary to say that Bracton's bell is no longer in existence; in fact there are no bells in the cathedral of a date earlier than A.D. 1611. Further, in the inventory of the goods of the cathedral made on the sixth of September 1506, which is still in the possession of the Dean and Chapter, there is a statement of the goods belonging to Bratton's altar, "*altare Bratton*," and in addition we learn from an inventory of books belonging to the cathedral, made in 1327, that Bracton was a donor of MSS. to the chapter. A cursory examination of the volumes in the present possession of the Chapter has not as yet brought to light any which were the gift of Bracton, but the Bodleian Library at Oxford may contain some MSS. which await discovery, as the Chapter of Exeter gave eighty very precious MSS. many years ago to the Bodleian Library. The original catalogue of these latter MSS. is still preserved, but the MSS. themselves are dispersed in different parts of that vast library, so that the discovery of a literary relic of the great justiciary, if any such exists, must be a work of time. It is matter of surprise, and at the same time evidence of the torpor, which had benumbed our cathedral institutions at the commencement of the last century, that Dr. Prince,

¹ *Præcipimus ulterius janitori clausæ, quatenus januas et ostia claudat a Festo Paschæ usque ad Festum Michaelis ad horam nonam, et a Festo Michaelis ad Festum*

Paschæ ad horam octavam, et eadem ultra non aperiat sine causa rationabili ante missam matutinam de Bratton, sub pœna exarbitrio Decani et Capituli limitanda.

in his carefully prepared work on the Worthies of Devonshire, London, 1705, has concluded his sketch of the Life of Bracton by observing that the place of Bracton's interment is unknown, and "that it is believed that he " was buried at or about London." Dr. Prince states, amongst other facts, that Bracton was Archdeacon of Barnstaple, but it does not appear to have occurred to him, or he deemed it to be useless, to apply for information at the chapter house of the cathedral or at the registry of the bishop, whereas the Editor has sought information at both of those sources, and has received not merely a courteous reply to his inquiries, but ample and interesting information from records kept in the best possible order, and which have thrown the most complete light upon the particular subject of his investigation.¹

Lord Chancellor Campbell has raised a question in his Lives of the Chief Justices of England, which is not merely of interest as regards the person of Bracton himself, but also as regards the legal profession, of which he was so brilliant a luminary. "It would be a matter," he says, "of the highest interest to know how a man, so enlightened and accomplished, was formed during the very " darkest period of English history, when the civilisation " introduced by the Normans seemed to be entirely " obliterated, and when the amalgamation of races in " this country had not yet begun to produce the native " energy and refinement, which afterwards sprung from " it; but while we have the pedigree, at least up to the " Conquest, and a minute account of the military exploits, of those who were employed in desolating the " world, we have no information whatever of the origin, " and very little of the career of a man, who explained " to his savage countrymen the benefits to be derived

¹ The Editor has to thank Mr. Arthur Burch, the Deputy Registrar of the Diocese of Exeter, for his

obliging assistance in procuring extracts from the documents of the Dean and Chapter of Exeter.

“ from an equitable system of laws, defining and protecting the rights of every class of the community, who, drawing his sentiments from the rich fountain of Roman jurisprudence, expressed them in the Latin tongue with a purity seldom reached by the imitators of the Augustan age, and who was rivalled by no juridical writer, till Blackstone arose five centuries later.” Such is the judgment, which has been pronounced on Bracton’s work within the memory of the living by a great lawyer, who had filled not merely the office of Chief Justice of the King’s Bench, but also that of Lord High Chancellor of England. He was himself perplexed to understand how Bracton had obtained such a grasp of the great principles of jurisprudence, which are amassed within the vast treasure house of the later Roman law, whilst he had at the same time acquired a complete knowledge of the municipal law of England in all its titles, as it stood when he wrote. Some few words may be not out of place to elucidate this branch of the subject.

The origin of a school of learned lawyers in England dates back to the visit of Theobald, Archbishop of Canterbury, to Rome in 1143. The Archbishop had been long engaged in a series of harassing disputes with Henry, Bishop of Winchester, the Papal Legate, and the brother of King Stephen; he resolved at last to present himself at Rome and to demand from Pope Celestin II. his recognition as “*legatus natus*” of the Holy See in right of the primacy of his Metropolitan See. The Archbishop on his arrival at Rome was not slow to perceive the great influence, which a new school of jurists, trained in the method of legal study, which Irnerius had recently introduced in the University of Bologna, exercised over the affairs of the Church at Rome. He procured accordingly a collection of the works of the more important Gloss-writers, and brought them back with him to England, accompanied by a picked body of jurists, the chief of whom

was Magister Vacarius, a Lombard by birth.¹ He established Vacarius at Oxford, where he taught the principles of the Roman jurisprudence to crowded audiences both of nobles and of poor scholars, who flocked from all quarters to hear him. "*Tam nobiles quam pauperes ad eum causa discendi confluebant*" are the words of Robertus de Monte. Vacarius was promoted by the Archbishop to a canonry in Canterbury Cathedral, and he published a valuable body of extracts from the Digest and the Code, sufficient, as he says, to decide all the questions of law, which were discussed in the schools, if a person only knew them thoroughly. His work was entitled "*Liber ex universo enucleato jure exceptus et pauperibus præsertim destinatus.*" Vacarius taught at a period, when the text of the *Corpus Juris Civilis* was not yet finally settled at Bologna, and his object being to adjust the principles of the Roman jurisprudence to the customary law of the realm of England, he has modified many passages of the original texts, which he had before him. Amongst the pupils and friends of Vacarius was John of Salisbury, who was Treasurer of Exeter Cathedral in 1174, and died Bishop of Chartres in 1180. He has left behind him a work entitled "*Policraticus, sive de nugis Curialium et vestigiis Philosophorum,*" Lugd. Batavorum, 1627. This work, which is full of citations from the Pandects, the Code, and the *Novellæ*, contains an exposition of certain branches of the Roman procedure in language, which is conclusive that the author had the original texts before him. Frederick Charles von Savigny, no mean authority on such a subject, considers this work to be a proof of the great influence exercised by the new school of law established at Oxford under Vacarius. Peter of Blois, who was born at Blois in the middle of the twelfth century, and who,

¹ The story as here told rests on the authority of John of Salisbury.

There is a version somewhat different in Gervasius Dorobornensis.

having filled the offices of Chancellor of the Diocese of Canterbury and Archdeacon of Bath, died in the ungrateful occupancy of the unendowed office of Archdeacon of London in 1200,¹ was a pupil of John of Salisbury. He went himself to Bologna to study the law in that university, and after his return he has given an account of the mode, in which the study of the law was encouraged in England by Richard, the Archbishop of the Metropolitan See. "In the house," he says, "of my Lord the Archbishop of Canterbury there are resident men of the highest culture in letters, amongst whom are found the best qualities of the judicial faculty combined with the greatest wariness and prudence. They practise themselves regularly, after prayers and before the refectory, in reading aloud, in arguing, and in deciding causes. All the difficult and knotty causes of the realm are brought forward in the common hall of audience, and each person according to his order, without strife or oburgation, sharpens his mental faculties of advocacy, and propounds in a subtle view, what seems to him to be the wiser and sounder argument."² We have here the first germs of the system of legal exercises, which was transplanted at a later period to the Inns of Court and to the College of Advocates in Doctors Commons, and which has tended so much to impart a scientific character to the English civil, as distinguished from the criminal, law. We must, however, make no mistake in appreciating the true value of the new studies introduced by Archbishop Theobald. It has been customary to speak of the study of the Roman law, as having been revived in

¹ An interesting letter exists (No. 151) addressed by Peter of Blois to Pope Innocent III. (A.D. 1199), in which he complains of there being no endowment whatever attached to the Archdeaconry of London, within which he states that there

were 120 parish churches and 40,000 inhabitants. Vol. ii. p. 84.

² Petri Blesensis, Bathoniensis Archidiaconi opera omnia. Edidit J. A. Giles, LL.D., Oxonii, 1847. cf. *Epistola Sexta*, A.D. 1177, vol. i. p. 15.

Europe in consequence of the Pisans having discovered a copy of the Pandects of Justinian amongst the spoils, which they carried away at the sack of the city of Amalfi in 1135. Whatever credit is to be given to this legend, whether the MS. of the Pandects, which is preserved in the present day at Florence in the ancient palace of the Republic, formed part of the Pisan spoils of Amalfi, which the Florentines in their turn wrested from the Pisans on the capture of Pisa in 1406, or whether it was brought direct from Constantinople to Pisa as Von Savigny holds to be the better opinion, the legend points to the fact of a rivalry having sprung up in the twelfth century between the school of law at Pisa and the youthful university of Bologna, of which the origin dates back to the privilege accorded to its schools by the Emperor Frederick I. at the Diet of Roncaglia in 1158. The legend of the Pandects having been discovered at Amalfi has been demonstrated by Von Savigny to have had its origin long after the sack of Amalfi, and it was probably invented by the Pisans in their desire to maintain the superiority of their text of the Laws of Justinian (*Litera Pisana*) over that of the School of Bologna (*Litera Bononiensis*). Be this as it may, and whether or not it may be justly asserted that the intercourse maintained between the southern cities of the Italian peninsula and the capital of the Eastern Empire had made the former acquainted with the legislation of Justinian at a comparatively early period, thus much is certain that the traditions of the Roman law, which maintained themselves in Spain after the conquest of that country by the Visigoths, and in the countries north of the Alps, were the traditions of the Theodosian Code, embodied either in the *Breviarium Alaricianum* or in the *Lex Romana Burgundiorum*.¹ The conquering hordes of Gothic and Wendic

¹ Bracton most probably refers to this "*Lex Romana*," when he speaks of the punishment of rape, | secundum legem Romanorum, Francorum et Anglorum, fol. 147 b.

origin, which overran the southern portions of the Western Empire, equally with the Alemannic tribes which subsequently overran the northern portions, accepted the civil laws of the people whom they conquered, and the Saxon invaders of England were no exception to this rule, when they established their supremacy over the earlier inhabitants of that island. We have trustworthy evidence, in a letter addressed by St. Aldelm to the Venerable Bede, in the seventh century, that "the marrow" of the Roman laws was still being drawn out of them by earnest students, and from a poem of Alcuin, in the eighth century, we gather that the study of the Roman jurisprudence was at that time still maintained in the school of York. But this jurisprudence was the jurisprudence of the Western Empire, the jurisprudence in fact of the Theodosian Code, which had been adapted by Anianus to the use of the Visigothic conquerors of Spain, and had found acceptance subsequently in the conquered provinces north of the Pyrenees under its new name of the *Breviarium*. This compilation, which was a collection of legal rules rather than of legal principles, was received both in France and in England, and it served to keep alive during the dark ages a flickering lamp of legal learning in those countries, until the torch which had been kindled by the teaching of Imerius at Bologna flashed a new light across the Alps, and laid the foundation of a new jurisprudence based on the study of the labours of Tribonian and his colleagues. Vacarius initiated in England the study of such branches of this new jurisprudence, as were in harmony with the principles of the common law of England, and were calculated to promote its scientific development. His teaching had its fruits. But since his time a great master had sprung up at Bologna, the most learned, as he is considered, of the Gloss-writers, namely, Azo, a native of Bologna, who published a summary (*Summa*), as it was termed, of the nine books of the Code of Justinian, and of the four books

of the Institutes. This treatise was so complete and so systematic, that it cast into the shade all the labours of his predecessors. Bracton appears to have been perfectly alive to the merits of Azo's improved teaching, and lost no time in selecting his writings as a subject of careful study, and he quotes repeatedly from them. Bracton thus appears to have brought up his knowledge of the Roman jurisprudence to the highest level of his age, keeping in mind always, as regards his great work, the principle of the school of Vacarius, that he should adopt such parts only of the Roman jurisprudence as would develop the jurisprudence of the English courts in the spirit of the common law of England.¹ In that spirit Bracton may be studied with advantage in the present day. Sir E. Coke speaks of Bracton in the highest terms in the preface to his Eighth Report and to his Ninth Report, but he does more than speak of him approvingly. He cites the authority of Bracton continually, both in his judgments and in his Commentary on Littleton. In a word, as long as the law of England lives, the memory of Bracton will never die. Such is the forecaste of Lord Chancellor Campbell, who has pronounced the author of the treatise "*De Legibus et Consuetudinibus Angliæ*" to be one of the greatest jurists who ever lived in any age or in any country.² That Bracton would not have been able to accomplish so comprehensive a work without official aid is the Editor's conviction, who is disposed to think that when King Henry III. assigned to his dear clerk (*dilecto clerico nostro*) Henricus de Bracton, the mansion of the young Earl of Derby, then an infant, for

¹ This cardinal principle of Academic instruction in the Roman law was maintained at the University of Oxford in the regulations of the Professorship of Civil Law, formerly in force under the Laudian Statutes. "Professor Régius Juris
" *Civilis bis item in qualibet Septi-*

" *manâ &c. . . quamlibet partem*
" *Corporis Juris Civilis exponat,*
" *cosque præcipue titulos, qui ad*
" *usum et praxin in hoc regno*
" *conducunt."* Corpus Stat. Univ. Oxon, 1768.

² Lives of the Chief Justices, vol. i. p. 68.

his chambers during the minority of the heir (Letters Patent, 38 H. III.), he not merely authorised him to have access to the Archives of the Exchequer for the Rolls containing the judgments of Martin de Pateshull and Willielmus de Radley, and other justiciaries (Maddox on the Exchequer, vol. ii. p. 257), but he also placed at his disposal whatever means he might require to aid him in reducing into writing the common law of England. Such indeed was the true character of Bracton's enterprise, which he modestly describes "as an attempt to reduce into a summary (*Summa*) the ancient judgments of righteous men, to be commended to perpetual memory by the aid of writing, requesting the reader, if he should find anything superfluous or erroneous stated in his work, to correct and amend it; or to pass it over with eyes half closed, since to retain everything in memory, and to make no mistake, is an attribute of God rather than of man."

A few additional words may not be out of place to defend Bracton against the possible assaults of a superficial criticism. It will be obvious to persons familiar with the established text of the *Corpus Juris Civilis*, which is in fact founded on the *Litera Pisana*, in other words on the Florentine Manuscript, that Bracton's citations from the Digest do not always harmonise with the text of the Florentine Manuscript. They may, therefore, be disposed in good faith to accuse Bracton of negligence, and may even incline to censure the Editor for not having corrected what they may suppose to be Bracton's mis-readings. This, however, would be on their part a very shallow view of the probable cause of the diversity between a reading adopted by Bracton, and the corresponding reading of the text of the Digest as now received. It is open to grave doubt, whether Bracton was ever acquainted with any text of the Digest, but that known as the *Vulgate*, which differed in many respects from the Florentine Manuscript. The Gloss-writers

for instance (Glossatores), of the school of Bologna, in the age which immediately preceded Bracton, worked upon a text known as the *Litera Vetus*, *Antiqua*, *Communis*, as they could not readily get access to the *Litera Pisana*, which was guarded at Pisa from public inspection, under precautions as extraordinary as those, which fenced in the original text of the *Assises de Jerusalem* in the Treasury of the Church of the Holy Sepulchre at Jerusalem. It is Von Savigny's opinion, and no higher authority can well be cited, that the Vulgate text differed considerably from the Pisan text. Such also was the opinion of Cujacius, one of the greatest masters of mediæval jurisprudence, who considers that there are readings to be found in several existing MSS. which do not altogether agree with the Florentine Manuscript, and that the explanation of those diversities is to be found in certain peculiarities of the Vulgate text. On the other hand, the *Litera Vetus*, which was the text followed by the Gloss-writers of the twelfth century, is believed on good evidence to have been brought from Ravenna to Bologna in fragments. The Code, for instance, came in two separate parts. The first nine books, which constituted the Code of the Gloss-writers, were received in the Law School of Bologna, some considerable time before the last three books arrived there, which were known under the distinctive title of "*Tres Libri*,"¹ and have been commented on under that title by Placentinus and by Pillius.²

¹ According to Odofredus, a contemporary of Bracton's, the different parts of the Vulgate text had been originally brought from Rome to Pentapolis, subsequently called Ravenna, when the Law-School of Rome was transferred to the latter city; and at a much later period, when Irnerius transferred his teaching from Ravenna to Bologna, he brought with him the first nine

books of the Code, and subsequently procured from Ravenna the texts of the *Digestum Vetus* and the *Digestum Novum* and the *Institutes*.

² Pillius was the advocate of the monks of Canterbury against Baldwin, Archbishop of Canterbury, in their appeal to Pope Urban III. in 33 H. II., when the King supported the Archbishop. Peter of Blois was the Archbishop's advocate.

The Digest, on the other hand, was introduced at Bologna in a dislocated condition, having been divided at Ravenna into three parts, of which the first and third, known subsequently as the *Digestum Vetus* and the *Digestum Novum*, arrived in advance of the intermediate part, known by the distinctive title of *Infortiatum*, the origin of which term is not altogether clear. The memory of these divisions of the Digest has been perpetuated by their retention in all the editions of the *Corpus Juris Civilis* of the fifteenth century, and in many of those of the sixteenth century. These various divisions of the Roman Law, to omit minor subdivisions, were recognised at Bologna at the time when Azo wrote his "Summa" of the first nine books of the Code and his "Summa" of the Institutes, inasmuch as he also wrote separate Glosses on the *Digestum Vetus*, on the *Digestum Novum*, and on the *Infortiatum*, and Bracton has made frequent use of Azo's "Summa" in preparing the first two books of his work. In one place, indeed, fol. 10, Bracton cites the Summa of Azo by name, in other places he does not confess his obligation to it; but it has been aptly remarked by a jurist of the United States that in Bracton's day "to copy what was deemed " useful was not considered plagiarism."

Owing to the great difficulties thrown in the way of scholars desirous to inspect the Manuscript of Pisa¹ before it was carried away to Florence, A.D. 1406, the text of that manuscript had less influence than the *Litera Vetus* in forming the text of the *Vulgate*, which history, better studied in the present day, authorises us to call the *Litera Bononiensis*. The manuscripts of that century, which are reported to have contained the Bolognese text, have all disappeared, and even its existence under that name had come to be doubted, when

¹ The term "*Pandectæ*," as distinguished from "*Digesta*," was applied by the Gloss-writers to the Manuscript of Pisa to distinguish it from other manuscripts.

the researches of Professor Wenck, of Leipsig, brought to light the treatise of Magister Vacarius, the first Professor, as he has been termed, of the Roman Civil Law in the University of Oxford,¹ in which there is express reference to the *Litera Bononiensis*. It appears from one of the Glosses on Vacarius, according to the authority of Von Savigny, that the Bolognese text, as cited by Vacarius in several parts of his work, was very different from the Florentine Manuscript. It would, therefore, be an act of some presumption to dispute the correctness of any text quoted by Bracton as an extract from the Digest, on the ground that it differs from the text of the Digest, as settled upon the model of the Florentine MS. subsequently to Bracton's time. The Vulgate text unfortunately exists no longer, at least no such text is known to be extant, but fragments of a text different from the Florentine Manuscript are scattered about in various MSS., from which Cujacius on one hand and Von Savigny on the other have pronounced a decided opinion that the Vulgate text, which we may call the *Litera Bononiensis*, differed very considerably from that of the Florentine Manuscript. The latter text has been adopted in the editions of the *Corpus Juris Civilis* since the seventeenth century. Under such circumstances the Editor has refrained from altering the text of Bracton in passages where Bracton might seem to have misread the Digest, lest he should possibly be seeking to be wiser than Bracton himself, and with a sciolistic self-complacency should risk to destroy a curious relic of an ancient text, which is now lost to us.

Another word of caution to the reader of Bracton may not be inopportune. It will be found in several passages of his work, more particularly in the two first books, that Bracton frequently makes use of the text of

¹ Magister Vacarius, *Primus Juris Romani in Anglia Professor*. Lipsiæ, 1820.

the Institutes, and also of Azo's text, without acknowledging his obligation to either of them, and that in several instances he has not adhered to the strict letter of the passage, as we find it extant in the original work. In such cases great caution is required in arriving at the conclusion that Bracton has misread the passage, which he intended to make use of. It has been an observation of Spence in his work upon the Equitable Jurisdiction of the Court of Chancery, and more recently of Professor Güterbock in his treatise on Bracton's relation to the Roman law, that Bracton, where he makes use of the Roman law without acknowledging it, reproduces Roman elements, which were in his time valid law in England, and that in reproducing those elements as English law he in some cases interpolates a word or makes a slight addition to the text, whilst in other cases he omits or alters a word, because it did not precisely conform to the law, as received in England. It would be unwise, therefore, for the student to seek in all cases to replace in the text of Bracton readings, which he may find in the Institutes or in Azo, under the idea that the readings which he finds in Bracton are wrong readings. It has been the Editor's object to retain all such readings in Bracton's text as are intelligible and are borne out by existing MSS., although other readings may be suggested, which are easier of construction, and therefore more inviting. The Latinity of Bracton is not always such as might be desired, and his sentences are sometimes clumsy in their structure, and sometimes elliptical.

The lovers of antiquarian research may feel some dissatisfaction with the Editor for not having published a "Variorum" edition of Bracton, in other words, an edition which should exhibit the various readings of the various MSS. The subject of such an edition was carefully discussed between the Editor and the late Sir Thomas Duffus Hardy, the Deputy Keeper of the Public

Records, and was after mature deliberation abandoned. The Editor had himself been originally inclined to publish an edition of Bracton with the various readings of the various MSS. which he might be able to collate, but on inspecting more than twenty MSS., none of which he could identify with any of the twelve MSS., consulted by the Editor of the printed book of 1569, he found the variations in the text of them to be infinite, and where those variations were not caused by the omissions of words, and sometimes of entire sentences, they were for the most part structural variations, which might be of curious interest to the bibliographical antiquary, but were of little advantage to the scholar, and of no value to the law student. The MSS., which are written in a monastic hand, are for the most part distinguished from those which are written in a curial hand by the fact that they have been the subject of a more scholarlike treatment in regard to the structure of the sentences, exhibiting a higher classical taste in the arrangement of the substantive and the adjective, the place of the verb, and the rhythm of the sentences, &c.; but these variations are evidently arbitrary and attributable to the superior scholarship of the scribe, and worthless except as evidence, that the Latinity of the cloister was superior to that of the courts. If there had been only six or seven known MSS. of Bracton, and the printed text of 1569 had been notoriously corrupt, a "Variorum edition" might have been reasonably undertaken, and might have been of interest to the scholar and of advantage to the student; but to have encumbered the Rolls edition of Bracton with the fanciful amendments of cloistered monks and the careless blunders of legal copyists, to say nothing of the transposition of whole sentences, which is a feature of many of the existing MSS., would, in the Editor's opinion, have served no useful purpose, and would have encumbered the text with a "Campana supellex."

Mr. Brinton Coxe, in his annotations on Professor Güterbock's work on the relation of Bracton to the Roman law, published at Philadelphia in 1866, represents the views of men of letters in the United States, as to what they would desire to see in a new edition of Bracton, namely, not mere variations of the text, which may not be without bibliographical interest, but a purer text, if it exists in England, than any of those which the Editor of the printed book of 1569 had before him, more particularly, he goes on to observe, as regards the interpolated reference to the Statute of 3 Edward I. in folio 253 b. of the printed book of 1569. Such a *desideratum* is supplied by Manuscript Rawlinson C. 160, and by that manuscript alone amongst those MSS. which the Editor has been enabled to inspect. Further, the same MS. supplies a reading, which supports the reading of the printed book of 1569 against the conclusion of Mr. Emlyn in a note appended to Chief Justice Hale's Pleas of the Crown, vol. 1, p. 77. Mr. Emlyn, in commenting on a passage in Bracton concerning the crime of high treason, where the printed book, fol. 118 b., has the following reading: "vel aliquid egerit vel agi pro-
" curaverit ad *seditionem* domini regis vel exercitus
" sui," has remarked that in most of the MSS. of Bracton the word in this place is "seductionem." The Editor has cited in a note to the present volume, p. 258, the two Rawlinson MSS. and two of the best MSS. in the British Museum as supporting the reading of the printed book of 1569. Two of these four MSS. are in a monastic hand, one being from the Archives of the Monastery of St. Augustine at Canterbury, and the other having belonged to the Abbot of Glastonbury. The other two MSS. are in a curial handwriting, one being in the Bodleian Library at Oxford, and the other being the Crewe MS. in the British Museum (Add. MSS. No. 11,353), so called by the Editor as having belonged to Sir Thomas Crewe, knight, who was the King's Serjeant in the reign

of James I. The Editor has accordingly maintained the reading of "seditionem" in the text of the present volume, notwithstanding other MSS., the most important of which is MS. Galeazzo in the National Library of Paris, exhibit the reading "seductionem." The Editor is the more satisfied, that the reading of MS. Rawlinson C. 160 is the original reading of Bracton himself, from the circumstance that Bracton has evidently had in mind the text of Glanville, who, in enumerating the various acts of high treason, illustrates the highest species in these words, "ut de nece vel *seditione* personæ " Regis vel regni vel exercitus," l. i. ch. 11. The Editor has thought himself called upon to add these few words in further explanation of the grounds upon which he has selected MS. Rawlinson C. 160 as his "test manuscript," and in justification of his confidence in that manuscript. He may add that his present impression is, that the arrangement of Bracton's work in the form, in which it has come down to us in the printed book of 1569, was completed after Bracton's death, and not before the reign of Edward I. On the other hand he has not met with anything in the MSS. to confirm Professor Biener's suggestion, that the Chapters on the Law of Obligations, fol. 99, sq., are not Bracton's own work.

T. T.

The Temple, 1879.

INDEX.

INDEX

EORUM OMNIUM, QUÆ IN HOC OPERE
CONTINENTUR.

LIBER SECUNDUS. DE ACQUIRENDO RERUM DOMINIO.

CAP. XXXVII. fol. 86.

	Page
1. De custodia hæredum	2
2. Item de ætate hæredum, et quod de feodo militari. In sokagio potest et debet re- spondere, sicut petere	4
3. De ætate fœminæ	6
4. Si plures sint domini capitales et unus te- nens, ad quem pertinet maritagium hæredis	10
5. Quod maritagium pertinet ad antiquiorem feoffatorem	12
6. De hærede sockmanni, sub cujus custodia esse debet	16

CAP. XXXVIII. fol. 88.

1. De maritagiis hæredum, et ad quem pertinere debeat maritagium	22
2. Si plures et diversæ hæreditates sint alicui descendentes tam ex parte patris, quam ex parte matris	26
3. Quando feodum alicujus deliberatur, quod ad dominum pertineat maritagium hæredis . .	28
4. Cum plures sint domini capitales, tam ex parte patris, quam ex parte matris . . .	30

TABLE OF ALL THINGS WHICH ARE CONTAINED IN THIS WORK.

THE SECOND BOOK. OF ACQUIRING THE DOMINION OF THINGS.

CHAPTER XXXVII. leaf 86.

	Page
1. Of the custody of heirs	3
2. Likewise respecting the age of heirs, and in the case of a military fief. In sockage one can and ought to be a defendant, as well as a plaintiff	5
3. Of the full age of a woman	7
4. If there be several chief lords, and one tenant, to whom belongs the maritage of the heir .	11
5. That the maritage belongs to the most ancient feoffor	13
6. Of the heir of a sockman, under whose cus- tody he should be	17

CHAPTER XXXVIII. leaf 88.

1. Of the maritage of heirs, to whom the maritage ought to pertain	23
3. If there are several inheritances descending to any one, as well from the father's side as from the mother's side	27
3. When the fief of any one is delivered, that the maritage of the heir belongs to the lord .	29
4. When there are several chief lords, as well on the father's side, as on the mother's side . .	31

	Page
5. Cum autem maritagium petatur, refert quis fuerit in seysina de hærede, utrum dominus, vel extraneus	32
6. Ad quem pertineat maritagium de sokagio	42
7. Provisio, si quis hæredem subtraxerit	44

CAP. XXXIX. fol. 91.

1. De donationibus propter nuptias ob causam dotis, dotis constitutione, et quid est dos	46
2. Quæ est rationabilis dos	48
3. Quis possit dotem constituere	—
4. Item quando et ubi	50
5. Quot sint species dotis	—
6. Item de qua re	52

CAP. XL. fol. 96.

1. Quod uxor vidua remanere debet in capitali mesuagio per quadraginta dies post mortem viri, donec dos sua fuerit ei assignata, et de dotis assignatione post mortem viri	80
2. Qualiter dos fuerit ei assignanda	82
3. Qualiter advocatio ecclesiæ transferatur in dotis assignationem, et qualiter non, et quod aliud est dare ecclesiam et advocacionem ecclesiæ	90
4. Quod dos libera esse debet	98

TABLE.

xciii

	Page
5. When however maritage is claimed, it is of importance, who is in seysine of the heir, whether the lord or a stranger	33
6. To whom belongs the maritage in case of sockage	43
7. A provision, in case any one has abducted an heir	45

CHAPTER XXXIX. leaf 91.

1. Concerning donations by reason of nuptials for the object of dower, the appointment of dower, and what is dower	47
2. What is reasonable dower	49
3. Who can appoint dower	—
4. Likewise when and where dower should be appointed	51
5. What are the specific kinds of dower	—
6. Likewise of what things dower is constituted	53

CHAPTER XL. leaf 96.

1. That the widowed wife ought to remain in the chief mesuage forty days after the death of the husband, until her dower has been assigned to her, and concerning the assignment of dower after the death of the husband	81
2. In what way dower is to be assigned to her	83
3. In what way the advowson of a church is transferred for the assignment of dower, and in what way not so, and it is a different thing to give a church and to give the advowson of a church	91
4. That dower ought to be free	99

LIBER TERTIUS. DE ACTIONIBUS.

CAP. I. fol. 98 b.

	Page
1. De actionibus, et quid sit actio. Unde oriatur	102

CAP. II. fol. 99.

1. Quid sit obligatio, et qualiter contrahitur	106
2. Quid est stipulatio	110
3. Si fiat stipulatio sub conditione	112
4. Facta in stipulationibus deducuntur	—
5. Item loca in stipulationibus deducuntur	114
6. Quid sit judicialis stipulatio	116
7. Si res plures in stipulationem deducuntur	—
8. Quis non possit stipulari	—
9. Causæ quare inventæ fuerunt stipulationes et obligationes	118
10. De obligationibus quæ nascuntur quasi ex contractu	118
11. De traditione et junctura	120
12. Per quas personas acquiritur obligatio	120
13. Quibus modis tollitur obligatio	—
14. Oriuntur obligationes ex delicto vel quasi	124

CAP. III. fol. 101.

1. De prima divisione actionum	126
2. Quæ sunt actiones personales	130
3. Quæ sunt actiones in rem de re immobili	132
4. Quæ sunt in rem de re mobili, et quod oportet apponere precium de re petita	134
5. Quæ sit actio mixta	136
6. Quod quædam conceptæ sunt in simplum et sic	138
7. De actionibus civilibus in rem	140

THE THIRD BOOK. CONCERNING ACTIONS.

CHAPTER I. leaf 98 b.

	Page
1. Of actions, and what is an action. Whence it arises	103

CHAPTER II. leaf 99.

1. What is an obligation, and how it is contracted	107
2. What is a stipulation	111
3. If the stipulation is made under a condition	113
4. Acts are brought into stipulation	—
5. Places also are brought into stipulation	115
6. What is a judicial stipulation	117
7. If several things are brought into stipulation	117
8. Who cannot stipulate	—
9. The causes, why stipulations and obligations have been invented	119
10. Of obligations, which arise as it were from a contract	—
11. Of delivering and joining	121
12. By what persons an obligation is acquired	—
13. In what ways an obligation is got rid of	—
14. Obligations arise from a delict or a quasi-delict	125

CHAPTER III. leaf 101.

1. Of the first division of actions	127
2. What are personal actions	131
3. What are real actions for an immovable	133
4. What are real actions for a movable, and that it is requisite to state a price for the thing claimed	135
5. What is a mixed action	137
6. That some actions are for a single sum and so on	139
7. Of civil actions against a thing	141

	Page
8. De actionibus civilibus in personam qualiter nascuntur	142
9. De possessoria hæreditatis petitione, quæ diei possit assisa novæ disseysinæ	142

CAP. IV. fol. 103.

1. Cui competant actiones quæ oriuntur ex maleficiis, et contra quem	144
2. Cui actio injuriarum competit et contra quem	144
3. Cui actio quod metus causa et contra quem	144
4. Cui et contra quem competat interdictum, quod vi aut clam	146
5. Cui et contra quem competat interdictum de itinere actuque privato	146
6. De interdicto quorum bonorum	—
7. Alia divisio actionum, si plures competant super una re, et una fuerit electa	—
8. Si quis se retraxerit ab una, cum fuerit electa	148
9. Actionum tertia divisio.	—

CAP. V. fol. 104 b.

1. Ubi terminari debent actiones criminales	150
---	-----

CAP. VI. fol. 104 b.

1. De generibus pœnarum, quibus homines afficiuntur propter eorum iniquitates	152
---	-----

	Page
8. Of civil actions against a person, how they arise	143
9. Of a possessory petition of an inheritance, which may be called an assise of novel disseysine .	—

CHAPTER IV. leaf 103.

1. Who are entitled to bring actions, which arise out of a tort, and against whom	145
2. Who is entitled to bring an action for injury, and against whom	145
3. Who is entitled to bring an action on account of fear, and against whom	—
4. To whom and against whom the interdict "quod vi aut clam" is competent	147
5. To whom and against whom the interdict concerning a right of footway or of private carriage-way is competent	—
6. Of the interdict "Quorum bonorum"	—
7. Another division of actions, if several are competent on one subject, and one has been elected	147
8. If a person has abandoned one form of action, after electing it	149
9. A third division of actions	—

CHAPTER V. leaf 104 b.

1. Where criminal actions ought to be determined	151
--	-----

CHAPTER VI. leaf 104 b.

1. Of the kinds of punishment, with which men are visited on account of their iniquities .	153
--	-----

CAP. VII. fol. 105.

	Page
1. Ubi terminandæ sunt actiones civiles . . .	156
2. De diversitate justitiariorum . . .	160
3. Quæ placita immediate placitari et terminari debent in curia domini, et rationes quare	162

CAP VIII. fol. 106.

1. De et coram quibus personis proponendæ sunt actiones et terminandæ . . .	164
2. Quid sit iudicium et in quibus consistit, et quod iudicium iudicis consistit in tribus .	—
3. Quod quadruplex est munus . . .	166
4. De potestate iudicis . . .	170
5. De divisione jurisdictionum sacerdotii et regni . . .	170

CAP. IX. fol. 107.

1. De regimine jurisdictionis, quæ pertinet ad regnum . . .	170
2. De sacramento, quod rex facere debet in coro- natione . . .	—
3. Ad quod rex creatus sit in ordinaria juris- dictione . . .	172

CAP. X. fol. 108.

1. De jurisdictione delegata, quæ ad justitios pertinet . . .	176
2. De differentia justitiariorum . . .	180
3. De potestate justitiariorum . . .	—
4. Qualiter et quando finiatur eorum potestas et jurisdictio . . .	182

CHAPTER VII. leaf 105.

	Page
1. Where civil actions are to be determined	157
2. Of the diversity of justiciaries	161
3. What pleas ought to be pleaded and determined immediately in the lord's court, and the reasons wherefore	163

CHAPTER VIII. leaf 106.

1. Where and before what persons actions are to be propounded and determined	165
2. What is a judgment, and of what it consists, and the judgment of a judge consists of three things	—
3. That a bribe is fourfold	167
4. Of the power of the judge	171
5. Of the division of the jurisdictions of the priest- hood and of the kingdom	—

CHAPTER IX. leaf 107.

1. Concerning the regulation of the jurisdiction, which pertains to the king	171
2. Concerning the oath, which the king ought to make at his coronation	—
3. For what purpose the king has been created with ordinary jurisdiction	173

CHAPTER X. leaf 108.

1. Of delegated jurisdiction, which belongs to justices	177
2. Of the difference of justices	181
3. Of the power of justices	—
4. In what way and when their power and juris- diction is terminated	183

CAP. XI. fol. 108 b.

	Page
1. Qualiter constituendi sunt justitiiarii ad itin- randum de comitatu in comitatum gene- raliter ad omnia placita vel specialia . . .	182
2. De sacramento, quod justitiiarii facient cum justitiiariam receperint	184
3. Breve uni eorum clausum	—
4. Breve omnibus justitiiariis simul, quod erit eorum warrantus, et publice legetur in comitatu patens	—
5. Breve de eodem omnibus justitiiariis simul patens	186
6. Breve clausum vicecomiti, quod venire faciat coram justitiiariis omnia placita . . .	—
7. Breve de generali summonitione clausum . . .	188
8. Breve cum ipsi justitiiarii fecerint summoni- tionem nomine proprio et per breve suum . . .	190
9. Item omnibus quatuor justitiiariis simul, ubi constituuntur ad quædam specialia et non ad omnia placita	192
10. Breve clausum vicecomiti, quod venire faciat assisam	194
11. Si autem constituentur quatuor milites justitiiarii ad unicam assisam capiendam novæ disseysinæ	—
12. Breve de eodem vicecomiti clausum, quod venire faciat assisam	196
13. Si justitiiarius banci solus constituatur, quod assumat	198
14. Breve vicecomiti clausum de eodem . . .	—
15. Breve si de banco transferatur assisa usque ad comitatum ad certos justitiiarios . . .	200
16. Breve clausum de eodem vicecomiti dirigen- dum	202

CHAPTER XI. leaf 108 b.

	Page
1. How justiciaries are to be appointed to travel from county to county generally for all causes, or for special causes	183
2. Concerning the oath which the justiciaries make, when they take upon themselves the office of justiciary	185
3. A close writ for one of them	—
4. A writ for all the justiciaries together, which shall be their warrant, and which shall be read open in the county	—
5. An open writ to all the justiciaries together on the same subject	187
6. A close writ to the viscount, that he cause all pleas to come before the justiciaries	187
7. A close writ of general summons	189
8. A writ, when the justiciaries themselves have issued a summons in their names and by their writ	191
9. Likewise to all the four justiciaries together, when they are appointed to hear certain special, and not all pleas	193
10. A close writ to the viscount, that he cause an assise to come	195
11. But if four knights be appointed to hold a single assise of novel disseysine	—
12. A close writ on the same to the viscount, that he cause an assise to come	197
13. If a justiciary of the Bench alone be appointed, that he may assume others.	199
14. A close writ to the viscount upon the same	—
15. A writ, if the assise be transferred from the Bench to the county to certain justiciaries	201
16. A close writ concerning the same to be addressed to the viscount	203

	Page
17. Si assisa transferatur a quatuor justitiariis usque ad iter justitiorum extra comita- tum, cum in comitatu incepta fuerit .	202
18. Breve de consuetudinibus justitiorum ad inquisitiones faciendas super contentiones ad querelam	204
19. Breve vicecomiti clausum super eodem . .	206

CAP. XII. fol. 112.

1. De modo et ordine proponendi actiones coram justitiariis, et de eorum officio	206
2. Breve, ne quis implacitetur sine brevi et præ- cepto domini regis	208
3. De ordine actionum	210
4. Quod prius agendum est super possessione, quam super proprietate	214
5. De actionibus vi honorum raptorum . .	222
6. De ordine actionum in triplici	226

TRACTATUS SECUNDUS LIBRI TERTII.

DE CORONA.

CAP. I. fol. 115.

1. Qualiter procedere debent justitii in itinere suo, et quo ordine	234
2. De sacramento duodecim militum electorum ad dicendum veredictum in placitis coronæ .	238
3. Capitula de quibus duodecim respondere de- bent	240

TABLE.

ciii

	Page
17. If an assise be transferred from four justiciaries to the circuit of the justiciaries beyond the county, when it has been begun within the county	203
18. A writ concerning the customs of the justiciaries to make inquisitions upon contentions at the complaint of any one	205
19. A close writ to the viscount on the same subject	207

CHAPTER XII. leaf 112.

1. Of the mode and order of propounding actions before the justiciaries, and of their office . .	207
2. A writ that no one be impleaded without a writ and precept from the king	209
3. Of the order of actions	211
4. That an action for possession takes precedence of an action for property	215
5. Concerning actions for goods taken by violence	223
6. Concerning the order of actions in triplicate . .	227

THE SECOND TREATISE OF THE THIRD BOOK.

CONCERNING THE CROWN.

CHAPTER 1. leaf 115.

1. How the justiciaries ought to proceed on their circuit, and in what order	235
2. Concerning the oath of the twelve knights elected to pronounce a verdict in the pleas of the crown	239
3. Articles concerning which they ought to answer	241

CAP. II. fol. 117 b.

	Page
1. Breve de generali summonitione in itinere justitiariorum itinerantium apud Shipwey in comitatu Kancii infra libertatem Quinque Portuum. Item capitula	252
2. Breve vicecomiti Norffolciæ et Suffolciæ, quod sciri faciat hominibus in Jernemewe et Donewiz	256

CAP. III. fol. 118 b.

1. De crimine læsæ majestatis et suis speciebus	258
2. De crimine falsi et suis speciebus	266
3. De occultatione thesauri inventi	269
4. Quid est thesaurus	270
5. Quid sit wreckum, et de grosso pisce, s. stur- gione et balena	—
6. De assisis regni juratis, si non observentur .	274

CAP. IV. fol. 120 b.

1. De crimine homicidii et qualiter dividitur .	274
2. Quid sit homicidium	—

CAP. V. fol. 121.

1. De officio coronatorum circa homicidium .	280
2. De inquisitionibus, ubi occisus fuerit	—
3. De attachiando culpabiles	282
4. Si in campis vel in boscis	—
5. Si notus vel ignotus	284
6. Si occisor fugiat	—
7. De submersis	—
8. Quæ sunt deodanda	286

CAP. VI. fol. 122.

1. De officio coronatoris in thesauris inventis .	286
---	-----

TABLE.

cv

CHAPTER II. leaf 117 b.

	Page
1. A writ of general summons on the iter of the justices itinerant to Shipwey in the county of Kent, within the liberty of the Cinque Ports. Likewise the articles	253
2. A writ to the viscounts of Norfolk and of Suffolk, that they should notify the men of Yarmouth and of Dunwich.	257

CHAPTER III. leaf 118 b.

1. Of the crime of high treason, and its species	257
2. Of the crime of forgery and its species	267
3. Of the hiding of treasure-trove	269
4. What is treasure	271
5. What is wreck, and concerning great fish, that is, sturgeon and whale	—
6. Of the sworn assises of the realm, if they are not observed	275

CHAPTER IV. leaf 120 b.

1. Of the crime of homicide	275
2. What is homicide	—

CHAPTER V. leaf 121.

1. Of the office of coroners concerning homicide	281
2. Concerning the inquests, where he has been slain	—
3. Of attaching the culpable	283
4. If in fields or in woods	—
5. If known, or unknown	285
6. If the slayer has run away	—
7. Concerning the drowned	—
8. What are deodands	287

CHAPTER VI. leaf 122.

1. Of the office of the coroner in treasure-trove	287
---	-----

CAP. VII. fol. 122.

- | | |
|---|------|
| | Page |
| 1. De officio coronatorum in raptu virginum . | 288 |

CAP. VIII. fol. 122 b.

- | | |
|--|-----|
| 1. De officio coronatorum de pace et plagis . | 288 |
| 2. De officio vicecomitis in appello de pace, et plagis amensurandis | — |
| 3. Si plaga periculosa sit, ponantur appellati in prisonam, nec sint per plegios dimittendi, sed videndum, in cujus prisona sunt custodiendi, s. in prisona illius, qui habet potestatem judicandi | 290 |
| 4. De probatore et socke et sacke | — |
| 5. Quod prisonos non debent de terris suis disseysiri, sed inde debent sustentari | 292 |
| 6. De inquisitione facienda, utrum appellati sunt odio et atia | — |
| 7. Breve de inquisitione | — |
| 8. Si per inquisitionem culpabilis inveniatur | 294 |
| 9. Si non sit culpabilis, dimittatur per plegios | — |
| 10. Aliud breve de eodem | 296 |
| 11. Si captus infra libertatem et dilata fuerit deliberatio et captor attachiatur, quod sit ad respondendum, quare talem cepit et imprisonavit | — |

CAP. IX. fol. 123.

- | | |
|--|-----|
| 1. De clerico imprisonato | 298 |
| 2. Cum in curia Christianitatis defecerit in purgatione, et si apostata fuerit | 300 |

TABLE.

cvii

CHAPTER VII. leaf 122.

	Page
1. Of the office of coroners in the rape of virgins	289

CHAPTER VIII. leaf 122 b.

1. Of the office of the coroner concerning peace and blows	—
2. Of the office of the sheriff in an accusation concerning peace, and in measuring wounds	—
3. If the blow be dangerous, let the accused parties be placed in prison, nor are they to be released on sureties, but it is to be seen in whose prison they are to be kept in custody, that is, in the prison of him who has the power of judging	291
4. Concerning an approver and socke and sacke	—
5. That prisoners ought not to be disseysed of their lands, but ought to be sustained out of them	293
6. Of holding an inquisition whether they are accused through enmity or hatred	—
7. Writ of inquisition	—
8. If by the inquisition he should be found culpable	295
9. If he be not culpable, let him be dismissed on sureties	—
10. Another writ on the same subject	297
11. If he has been seized within a franchise, and his release has been deferred, and the seizor is attached, that he be ready to answer why he has seized and imprisoned such a person	—

CHAPTER IX. leaf 123.

1. Concerning a clerk cast into prison	299
2. When in the court of Christianity he has failed to purge himself, and if he shall be an apostate	301

	Page
3. Breve, si ordinarius noluerit ei purgationem inducere, cum sit ei liberatus	300
4. De custodia reorum, qui sunt in prisonam mittendi, et qui per plegios dimittendi, et de carceris fractione	302

CAP. X. fol. 124.

1. De criminosis, qui statim fugiunt post feloniam, et tunc qualiter secta fieri debeat post tales, et quorum quidam sunt in franco plegio, et quidam de manupastu alicujus	302
2. Quod prima nocte dici poterit uncuth, secunda vero gust, tertia nocte hoghenehyne	306

CAP. XI. fol. 125.

1. Qualiter reus criminosus sit requirendus, et si non veniat, qualiter utlagandus	308
2. Cum malefactor fugam ceperit, qualiter interrogandus erit in comitatu, et de comitatu in comitatum, et qui sequi debeant et possunt	310
3. In quibus mulier habet appellum	—
4. Quis utlagari possit et debeat	312
5. Quod aliquis non possit utlagari, qui infra duodecim annos fuerit, et quod foemina non potest utlagari, sed weyviari	—
6. Qualiter quis sequi debeat, et quot comitatus	314
7. De secta non rite facta	316
8. Si sectam resumere voluerit, sine secta non procedatur ad utlagationem	—

TABLE.

cix.

	Page
3. Writ, if the ordinary is unwilling to impose upon him a purgation	301
4. Of the custody of the property of those, who are to be sent to prison, and of those who are to be released on sureties, and concerning prison breaking	303

CHAPTER X. leaf 124.

1. Of criminous persons who take to flight immediately after a felony, and then how pursuit is to be made after them, and some of whom are in frankpledge, and some are members of a household	—
2. That on the first night he may be called uncuth, but on the second gust, on the third night hoghenhyne	307

CHAPTER XI. leaf 125 b.

1. In what way a criminous defendant is to be required, and if he does not come, in what way he is to be outlawed	309
2. When a malefactor has taken flight, in what way he is to be sought for in the county, and from county to county, and who ought and may pursue him	311
3. In what cases a woman has a right of accusing	—
4. Who may and ought to be outlawed	413
5. That a person cannot be outlawed, who is of less than twelve years of age, and that a woman cannot be outlawed, but may be waived	—
6. In what way a person ought to sue, and at how many county courts	315
7. Concerning a suit not duly made	317
8. If he is willing to resume the suit, let no proceedings to outlawry take place without a suit	—

VOL. II.

h

CAP. XII. fol. 126 b.

	Page
1. De causa utlagationis vera et præsumptiva .	320
2. Si vulneratus curari noluerit, cum possit .	—
3. Item causa præsumptiva	322
4. Si nulla subfuit causa	—
5. Si causa non sit periculosa	—
6. Si quis fuerit utlagatus ob nullam causam vel minus rationabilem, ei gratia est major quantum ad inlagationem	324
7. Item potest utlagatio pronunciari nulla, et fiat breve regis super hoc, et nulla dici poterit multis rationibus	—
8. Quæ dici poterit nulla, et quibus rationibus, quia minus rite facta	326
9. Item tam ille de fortia, quam ille de facto fugerint, et utlagatur quis tam propter factum quam propter fortiam, et contrario	330
10. Qualiter et quando pronuntiari debet utla- garia de facto, et quando de fortia, an statim et eodem die diversa opinio	332
11. Si ille de fortia præsens sit, et ille de facto fugerit, vel si uterque	—
12. Si quis in quarto comitatu velit manucapere, non audietur	334
13. Ille de fortia non est interrogandus, donec factum vincatur	—
14. Cum uterque præsens fuerit, et ille de facto convictus, qualiter sit procedendum con- tra illum de fortia	336

CHAPTER XII. leaf 126 b.

	Page
1. Of a true and of a presumptive cause of outlawry	321
2. If a wounded person will not, when he can, be treated for his cure	—
3. Likewise a presumptive cause	323
4. If there be no substantive cause	—
5. If the cause be not dangerous	—
6. If a person has been outlawed for no cause, or an unreasonable cause, more grace should be shown to him as regards inlawing him	325
7. Likewise the outlawry may be pronounced null, and a royal writ may be issued thereon, and it may be declared null for many reasons	—
8. What may be called null and in what ways, because it has been unduly made	327
9. Likewise as well one accused of being an accessory, as of being a principal, if they run away, and a person is outlawed on account as well of being an accessory as of being a principal, and the contrary	331
10. How and when ought outlawry to be proclaimed against a principal, and when against an accessory; whether forthwith and on the same day opinions differ	333
11. If he who is accused as an accessory is present, and he who is accused as a principal has taken flight, or if each has done so	—
12. If any one wishes to give bail at the fourth county court	335
13. The accessory is not to be interrogated, until the act has been proved	—
14. But when each is present, and the principal is convicted, how proceedings are to be taken against the accessory	337

CAP. XIII. fol. 121 b.

	Page
1. Quid utlagatus forisfaciat per utlagationem, et utlaugh dicitur frendlesman . . .	336
2. Cum-utlaugh qui scienter talem receptaverit . . .	—
3. Si fugerit, et se defenderit . . .	338
4. Si nec fugerit, nec se defenderit . . .	—
5. Quod sola fuga non inducit . . .	—
6. Forisfacit, quæ juris sunt . . .	340
7. Item forisfacit actionem . . .	—
8. Item dissolvit donationes, venditiones, et omnes contractus, et obligationes . . .	342
9. Quod quædam catalla sua sunt domini regis . . .	—
10. Si terram liberam habuerit, statim capiatur in manum domini regis per unum annum et unum diem . . .	—
11. Cum autem post annum et diem terra non fuerit domino capitali restituta, ad quere- lam veri domini fiat vicecomiti tale breve . . .	344
12. Facta inquisitione de restituenda terra do- mino capitali . . .	—
13. Aliud breve de eadem, de restituenda terra . . .	—
14. Si terra data in maritagium cum filia ali- cujus de hæreditate materna extiterit in manu domini regis per annum et diem per feloniam, quam vir ipsius filiæ fecit, breve de restituenda . . .	346
15. Breve, si rex alienaverit infra terminum suum, vel ballivi sui . . .	—
16. Item aliud breve de eadem materia . . .	348
17. Quod nunquam revertitur terra ad dominum capitalem, nisi felonia convicta fuerit . . .	—

CHAPTER XIII. leaf 128 b.

	Page
1. What an outlawed person shall forfeit by outlawry, and that an outlaw is called a friendless man	337
2. He who knowingly receives such a person is a com-outlaw	—
3. If he has taken flight, and defended himself	339
4. If he has not taken flight, nor defended himself	—
5. That flight alone does not entail outlawry	—
6. It forfeits all rights	341
7. Likewise it forfeits his right of action	—
8. Likewise it dissolves donations, sales, and all contracts and obligations	343
9. That certain of his chattels are forfeited to the king	—
10. If he shall have a freehold, let it be seized into the hand of the king for a year and a day	—
11. But when after a year and a day the land has not been restored to the chief lord, upon the complaint of the true lord, let a writ of this kind issue to the viscount	345
12. An inquest having been held as to restoring the land to the chief lord	—
13. Another writ concerning the same, concerning the restitution of the land	—
14. If land given in maritage with the daughter of a certain person from her mother's inheritance has been in the hand of the king for a year and a day for a felony, which the husband of the daughter has committed, a writ for its restitution	347
15. A writ, if the king has alienated [the land] within his term or that of his bailiff	—
16. Another writ in the same matter	349
17. That the land shall never return to the chief lord, unless there is a conviction of felony	—

	Page
18. Si felo ante feloniam convictam obierit	350
19. Si donationem fecerit ante feloniam convictam, vel post	—
20. Item non valebit felonis generatio, nec ad hæreditatem paternam, vel maternam habendam	—
21. Exemplum de filio senatoris	—
22. Quod nihil forisfacit quis, antequam fuerit convictus	—
23. Diversa opinio Martini de Pateshull et Stephani de Segrave de hæreditate mulieris	352

CAP. XIV. fol. 131.

1. De inlagatione, qualiter utlagati post utlagariam ex causa mittuntur ad pacem	358
2. Breve, quod dominus rex perdonat fugam et utlagariam, omnibus ballivis dirigendum a tempore suo	360
3. Aliud, quod rex perdonat (quantum ad ipsum pertinet) utlagariam a tempore patris sui	—
4. Item, quod rex perdonat utlagariam, quia tempore, quo appellum factum fuit, ipse appellatus in alio comitatu appellatus fuit de eadem roberia	—
5. Si quis falso coram justitiariis fuerit indicatus, et postea se reddiderit prisonæ domini regis, et remittit rex utlagariam	362
6. Si ille, qui interfici debuit, sanus et vivus redierit	364
7. Breve de eo, qui interfici debuit, si sanus et vivus revertatur	—

TABLE.

cxv

	Page
18. If the felon has died before a conviction of felony	351
19. If he has made a donation before a conviction of felony	—
20. Likewise the generation of a felon will not avail for a paternal or maternal inheritance	—
21. An example from a son of a senator	—
22. That a person forfeits nothing, before he shall have been convicted	—
23. A diversity of opinion between Martin de Pateshull and Stephen de Segrave concerning the inheritance of a woman	353

CHAPTER XIV. leaf 131.

1. Of inlawry, in what way outlawed persons after their outlawry for cause shown are admitted to the king's peace	359
2. A writ, that the king pardons the flight and outlawry, to be directed to all bailiffs from his own time	361
3. Another writ that the king pardons, as far as pertains to him, an outlawry from the time of his father	—
4. Likewise, that the king pardons the outlawry, because at the time, at which the charge was made, the party charged was charged in another county for the same robbery	—
5. If any one has been falsely indicted before the justiciaries, and has afterwards surrendered himself to the prison of the lord the king, and the king remits to him his outlawry	363
6. If he, who ought to have been slain, returns safe and alive	365
7. A writ concerning him, who ought to have been slain, if he returns safe and alive	—

	Page
8. De inlagatione, et ad quæ restituatur inlagatus	366
9. Quod judicanda erit causa primo ante inlagationem, per quam fuerit utlagatus, ut facilius admittatur ad pacem secundum causam utlagationis	—
10. Si nulla causa, sed infortunium sine feloniam .	368
11. Si nulla omnino causa	—
12. Non restituitur quis nisi tantum ad pacem .	—
13. Quid felo forisfaciat, sive utlagatus	370
14. Item restituuntur legi maxime in criminalibus, quod ipsi aliis respondeant, et alii ipsis non, in civilibus vero ipsi aliis	376
15. Quod rex remittit eis suam sectam sine præjudicio aliorum	—
16. Quod oportebit, quod versus ipsum loquatur per verba appelli	378
17. Item si antenatus filius ex pluribus feloniam fecerit in vita patris, et fuerit utlagatus in vita patris	—
18. Cum utlagatus captus fuerit, non alicui licitum est eum interficere, nisi in ipsa captione se defendat	382
19. Quod aliquando potest dominus rex de gratia sua vitam concedere restitutis	—

CAP. XV. fol. 134 b.

1. De homicidio, quod palam et pluribus astantibus perpetratum est, et postea de homicidio, quod nullo præsentem perpetratum est, et quod dicitur murdrum	384
---	-----

	Page
8. Concerning inlawry, and to what things the person inlawed is restored	367
9. That the cause, for which a person has been outlawed, must be judged of first before the inlawry, that he may be admitted more easily into the peace of the king according to the cause of the outlawry	—
10. If there be no cause, but misadventure without felony	369
11. If there has been no cause at all	—
12. A person is not to be restored to any thing but the king's peace	—
13. What a felon forfeits, or an outlaw	371
14. Likewise they are restored to the law chiefly in criminal matters, that they may answer to others, but not others to them, and in civil matters themselves to others	377
15. The king remits to them his suit, without prejudice to others	—
16. It will be incumbent that the accuser proceed against him in the words of the charge	379
17. Likewise, if a firstborn son out of several has committed a felony during the lifetime of the father, and has been outlawed in the time of the father	—
18. When the outlaw has been seized, it is not allowable for any person to kill him, unless he resists the seizure	383
19. That sometimes the king may of his grace grant to restored persons their life	—

CHAPTER XV. leaf 134 b.

1. Of homicide, which is perpetrated openly, and when several persons are standing by, and afterwards of homicide, which is perpetrated when no one is standing by, and which is called murder	385
--	-----

	Page
2. Quid sit murdrum	384
3. Quid causa inventionis murdrorum	—
4. Quid dicitur murdrum	386
5. Qualiter patria excusatur a murthero	—
6. Si interfector captus fuerit, nullum erit murdrum	388
7. Item qualiter debet Englescheria presentari secundum consuetudinem diversorum comitatuum	390

CAP. XVI. fol. 135 b.

1. Si malefactores fugiunt ad ecclesiam, qualiter debeant regnum abjurare, si cognoscant latrocinium et feloniam	392
2. De sacramento, qualiter debent abjurare regnum	394
3. Quod non debet morari in ecclesia ultra quadraginta dies; si velit, quid tunc agendum sit	396
4. De divisione exiliorum	398

CAP. XVII. fol. 136 b.

1. De homicidio per infortunium et casuali	398
--	-----

CAP. XVIII. fol. 136 b.

1. De illis qui capti sunt, quod non debent spoliari bonis suis, sed debent inde sustentari	400
2. Breve, quod de bonis suis sustententur	—
3. Qualiter captus produci debet coram justitiariis, et quare justiciarii examinare debent in duello injungendo et judiciis	402

TABLE.

cxix

	Page
2. What is murder	385
3. What is the cause of the invention of murders	—
4. What is called murder	387
5. In what way the country is excused from murder	—
6. If the slayer has been captured, there is no murder	389
7. Likewise in what way Englishery ought to be presented according to the customs of different counties	391

CHAPTER XVI. leaf 135 b.

1. If malefactors take refuge in a church, in what way they ought to abjure the realm, if they acknowledge robbery or felony . . .	393
2. Of the oath, by which they abjure the realm . . .	395
3. That he ought not to delay in the church beyond forty days, if he wishes: what is then to be done	397
4. Of the division of exiles	399

CHAPTER XVII. leaf 136 b.

1. Of homicide by misadventure and casual . . .	399
---	-----

CHAPTER XVIII. leaf 136 b.

1. Of those who are captured, that they ought not to be spoiled of their goods, but they ought to be sustained from them . . .	401
2. A writ that he may be sustained of his goods	—
3. How the captured person ought to be produced before the justiciaries, and wherefore the justiciaries ought to examine him in enjoining the duel and in judgments . . .	403

	Page
4. Vadiatio duelli, et si appellatus victus fuerit vel appellans	404
5. Ne quis extraneum hospitetur nisi de clara die	406

CAP. XIX. fol. 138.

1. De quibus loqui debeat appellans	408
2. De appello de morte hominis	—
3. Quod possunt plures appellari, sicut unus, de morte alterius	410
4. Verba appelli de morte fratris vel alterius	412
5. Item appellum de fortia	—
6. Qualiter debent appellati defendere	414
7. Si duellum declinare noluerit per hoc, quod transiit ætatem	416
8. Si omnes concurrunt, qui jungunt appellum, statim vadietur duellum	—
9. Si plures appellaverint unum, sed de diversis factis, sicut de diversis plagis	—
10. Si ante duellum percussum omnes appellantes mori contingat	418
11. Si autem appellatus victus fuerit de facto, tunc demum procedatur versus alios de fortia et de præcepto	—
12. Si plures unum appellaverint de morte ali- cujus, de pluribus plagis	420
13. Si unus plures appellaverit de diversis plagis mortalibus	422

	Page
4. The pledging of battle, and if the appellor or the appellee be vanquished	405
5. That no one receive a guest, except by daylight	407

CHAPTER XIX. leaf 138.

1. Concerning what things an appellor ought to speak	409
2. Of an appeal concerning the death of a man	—
3. That several persons, just as one, may be appealed for the death of a man	411
4. The words of an appeal concerning the death of a brother, or of another person	413
5. Likewise an appeal against an accessory	—
6. How the parties appealed ought to make their defence	415
7. If he has declined battle, because he has passed the age	417
8. If all concur, who join the appeal, let battle be at once waged	—
9. If several persons have appealed one person for different acts, as for different wounds	—
10. But if before the battle is begun, all the appellants happen to die	419
11. But if the party appealed for the act has been vanquished, then let proceedings go on against others accessory by force and by counsel	—
12. If several have appealed one person concerning the death of another from many wounds	421
13. If one has appealed several concerning different mortal wounds	423

CAP. XX. fol. 139 b.

	Page
1. Quod appellatus det vadium defendendi et appellans det vadium disrationandi. Item de exceptionibus contra appellum . . .	424
2. Quod quædam sunt exceptiones, quæ generales sunt ad omnia placita, quædam speciales et diversæ secundum diversitatem placitorum et appellorum	—
3. Prima exceptio et generalis in omni appello de secta, si bene et secundum legum terræ facta sit	—
4. Si de recordo inter justitarios contentio habeatur, tunc quid agendum sit	430
5. Contra appellum poterit excipere appellatus. Exceptiones contra appellum	432

CAP. XXI. fol. 141 b.

1. De duelli vadiatione. Cum nulla sit exceptio, tunc statim vadietur duellum	438
2. De forma sacramenti	440
3. Facto sacramento ex utraque parte committatur defensor duobus militibus	—
4. De sacramento faciendo in campo	442
5. De banno domini regis	—
6. Si appellatus victus fuerit	—
7. Si appellans in campo se retraxerit	—
8. Cum omnes de facto convicti fuerint, tunc procedatur contra eos de forcia, et de sacramento ab appellato faciendo	—
9. De sacramento faciendo ab appellante	—

CHAPTER XX. leaf 139 b.

	Page
1. The appellee gives bail to defend himself, and the appellor gives bail to derayne. Likewise concerning the exceptions against an appeal	425
2. That there are certain exceptions, which are general to all pleas, and certain special and divers according to the diversity of pleas and appeals	—
3. The first, which is a general exception in all appeals, is concerning the suit, if it has been well instituted and according to the law of the land	—
4. If there be contention between the justiciaries concerning the record, what is to be done	431
5. The appellee may except against the appeal. Exceptions against an appeal	433

CHAPTER XXI. leaf 141 b.

1. Concerning the wager of battle. When there is no exception, let battle be forthwith waged	439
2. Concerning the form of the oath	441
3. On the oath having been taken by both parties, let the defendant be committed to the charge of two knights	—
4. Of the oath to be taken on the field	443
5. The proclamation of the king	—
6. If the appellee has been conquered	—
7. If the appellor has retracted on the field	445
8. When all the principals have been convicted, then let proceedings commence against the accessories. Of the oath to be taken by the appellee	—
9. Of the oath to be taken by the appellor	—

	Page
10. Si appellans de facto victus fuerit vel se retraxerit, illi de fortia liberantur . . .	446
11. Si primo appellans de facto mortuus fuerit, vel defaultam fecerit, dominus rex potest procedere ex officio . . .	—
12. Item defenditur quis ab appello propter mahemium, et quia transit ætatem . . .	450
13. Si mulier per vim oppressa . . .	—

CAP. XXII. fol. 143.

1. De indictatis per famam patriæ ex suspicionem . . .	450
2. Qualiter justitiarius debeat examinare . . .	452
3. Quod omnes a jurata amoveantur, quos appellatus sufficienti habet ratione suspectos . . .	454
4. Quod villatæ jurabunt per se, vel omnes simul erectis manibus . . .	456
5. Verba, quæ a justitiariis procedenda sunt post sacramentum factum . . .	—
6. Generalis observantia in sacramentis coram justitiariis faciendis . . .	—

CAP. XXIII. fol. 144.

1. De appello de pace, et plagis factis contra pacem, et de verbis appellei, et de modo appellandi et defendendi, et de modo defendendi et disrationandi . . .	458
2. De exceptionibus contra hujusmodi appellum . . .	460
3. Item quid dicetur de eo, qui virilia abscidit alicujus . . .	462

	Page
10. If the appellor against a principal has been vanquished, or has retracted, the appellees as accessories are liberated	447
11. If in the first place the appellor against a principal has died or made default, the lord the king himself may proceed of office	—
12. Likewise a person is defended from an appeal on account of being maimed, or because he has passed the age	451
13. If a woman has been ravished by force	—

CHAPTER XXII. leaf 143.

1. Of persons indicted upon common fame or suspicion	451
2. How the justiciary ought to examine	453
3. That all be removed from the jury, whom the appellee has sufficient reason to suspect	455
4. That the townspeople shall swear singly, or all together with uplifted hands	457
5. The words which are to proceed from the justiciaries after the oath has been taken	—
6. A general observance in the oaths to be taken before the justiciaries	—

CHAPTER XXIII. leaf 144.

1. Of an appeal for breach of the peace, and for wounds inflicted against the peace, and of the words of the appeal, and the mode of appealing, and of defending, and of the mode of defending and of deraigning	459
2. Of the exceptions against an appeal of this kind	461
3. Likewise what is to be said of him, who has cut off the private parts of another	463

CAP. XXIV. fol. 145.

	Page
1. De appello de plagis et mahemio, et de modo appellandi et defendendi	464
2. De exceptionibus contra hujusmodi appellum	466
3. Quid dici debeat mahemium.	468
4. Quid sit deformitas, et non mahemium	—

CAP. XXV. fol. 145 b.

1. De appello de pace et imprisonment, et de verbis appelli, et de modo appellandi et defendendi	470
2. De exceptionibus contra hujusmodi appellum	472
3. Qualiter in appello isto agi poterit civiliter vel criminaliter, cum adjectione felonie vel non	—

CAP. XXVI. fol. 146.

1. De actione criminali sic de pace et roberia, et de appellis, et de modo appellandi et defendendi.	474
2. De appellis de felonia et pace regis, et de verbis appelli et defendendi, et responsione appellati	476

CAP. XXVII. fol. 146 b.

1. De appello de iniqua combustionem et roberia, et de modo appellandi et defendendi	478
--	-----

CAP. XXVIII. fol. 147.

1. De appellis de raptu virginum	480
2. De verbis appelli mulieris querentis de raptu, et defensione appellati	88

CHAPTER XXIV. leaf 145.

	Page
1. Of an appeal for wounds and mayhem, and the mode of appealing and of defending . . .	465
2. Of exceptions against this kind of appeal . . .	467
3. What ought to be termed mayhem . . .	469
4. What is disfigurement, not mayhem . . .	—

CHAPTER XXV. leaf 145 b.

1. Of an appeal for a breach of the peace and imprisonment, and of the words of the appeal, and the mode of appealing and of defending . . .	471
2. Of exceptions against this kind of appeal . . .	473
3. In what manner in this appeal a civil or a criminal action may be brought with the addition of felony or not . . .	—

CHAPTER XXVI. leaf 146.

1. Of a criminal action for a breach of the peace and a robbery, and of appeals, and of the mode of appealing and of defending . . .	475
2. Of appeals of felony and the peace of the king, and of the words of the appeal and the defence, and the answer of the defendant . . .	477

CHAPTER XXVII. leaf 146 b.

1. Of an appeal for malicious arson and robbery, and the mode of appealing and of defending . . .	479
---	-----

CHAPTER XXVIII. leaf 147.

1. Of appeals concerning the rape of virgins . . .	481
2. Concerning the words of the appeal of a woman complaining of rape, and concerning the defence of the appellee . . .	489

	Page
3. De exceptione contra appellum	488
4. Si appellatus per patriam fuerit convictus, quæ poena sequatur	490
5. De appellatis de fortia	492

CAP. XXIX. fol. 148 b.

1. In quibus mulier habet appellum	494
2. De appello de morte viri sui	—

CAP. XXX. fol. 149.

1. De appellatis attachiandis	496
2. Breve de attachiamento	—
3. Aliud breve ad idem de eadem	—
4. Breve de faciendo venire illum coram jus- titiariis	498
5. Aliud breve ad idem de eodem, et nisi in- veniat, quad utlagetur et interrogetur de comitatu in comitatum	—
6. Breve quod tradatur per ballium	500
7. Breve de summonendo appellum coram do- mino rege	—
8. Breve, si appellum factum fuerit immediate coram rege	502
9. Breve vicecomiti de faciendo recordum in comitatu coram custodibus	504
10. Aliud breve de eodem vicecomiti	—

CAP. XXXI. fol. 150.

1. Si quis fecerit feloniam de seipso	504
---	-----

TABLE.

cxxix

	Page
3. Concerning the exception against an appeal .	489
4. If the appellee be convicted by the country, what punishment follows	491
5. Concerning those, who are appealed as acces- sories.	493

CHAPTER XXIX. leaf 148 b.

1. In what things a woman has an appeal	495
2. Of an appeal concerning the death of her hus- band	—

CHAPTER XXX. leaf 149.

1. Of attaching appellees	497
2. A writ of attachment	—
3. Another writ to the same, concerning the same	—
4. A writ for causing the appeal to come before the justiciaries	499
5. Another writ to the same about the same, and unless he be found, that he be outlawed and sought for from county to county	—
6. A writ, that he be delivered up by his bail	501
7. A writ for summoning the appeal before the king	—
8. A writ, if the appeal has been made imme- diately before the king	503
9. A writ to the viscount to make a record in the county court before the keepers of it	505
10. Another writ on the same subject to the vis- count	—

CHAPTER XXXI. leaf 150.

1. If any one has committed a felony against himself	505
---	-----

CAP. XXXII. fol. 150 b.

	Page
1. De actione furti, et quid sit furtum . . .	508
2. Quot species furti	510
3. De appello de latrocinio	512
4. Si defendat, vadietur duellum	512
5. Si appellatus patriam elegerit	512
6. Breve de faciendo venire warrantum per auxilium	514
7. Si warrantum vocaverit per auxilium curiæ, breve de venire faciendo warrantum . . .	516
8. Si furtum in manu alicujus inveniatur . . .	—
9. Si uxor teneatur ex furto viri	518
10. Si uxor cum viro convicta fuerit	—
11. Si civiliter prægnans fuerit damnanda . . .	520

CAP. XXXIII. fol. 152.

1. De furto manifesto et probatore cognoscente . . .	520
2. Breve, quod rex dat justitiariis potestatem concedendi probatori vitam et membra . . .	524
3. Quod vicecomes attachiet eos, quos probator appellaverit	—
4. De capiendo appellatum per probatorem, qui se cognoscit esse latronem	526

CAP. XXXIV. fol. 152 b.

1. Cum præsens fuerit appellatus, qualiter probator proponere debet intentionem et appellum suum, et de modo defendendi . . .	526
---	-----

CHAPTER XXXII. leaf 150 b.

	Page
1. Concerning the action for theft, and what is theft	509
2. How many species of theft	511
3. Concerning an appeal for robbery	513
4. If he defends, let battle be waged	—
5. If the appellee has chosen the country	--
6. A writ to cause a warrantor to come in aid	515
7. If he has called a warrantor by the aid of the court, a writ to make the warrantor come	517
8. If the thing stolen has been found in the hand of any one	—
9. If the wife be liable for the theft of her husband	519
10. If the wife has been convicted with her husband	—
11. If according to the Civil Law a pregnant woman ought to be condemned	521

CHAPTER XXXIII. leaf 152.

1. Concerning manifest theft, and an approver who confesses	521
2. A writ, whereby the king gives to the justices the power of granting to an approver his life and limbs	525
3. A writ, that the viscount attach those, whom the approver has accused	--
4. A writ to capture the persons accused by an approver, who confesses himself to be a larcener	527

CHAPTER XXXIV. leaf 152 b.

1. When the accused shall be present, in what way the approver ought to state his charge and his accusation, and of the mode of defence	527
---	-----

	Page
2. Quod appellatus primo juret per verba negativa, et postea appellans per verba affirmativa	528
3. Si autem defensionem non susceperit in propria persona, sed excipiat et iudicium petat, si contra talem cognoscentem se esse latronem	530
4. Si probator fecerit quod promisit, teneatur ei conventio, et sic in fine abjuret regnum	532
5. Si comitatus vel curia alicujus petentis appellum tenuerit de probatore, veniat recordum ad curiam regis per hoc breve .	534
6. Item breve vicecomiti, quod probatorem habeat coram rege et omnes, quos ipse appellaverit de societate, quia plures forte propter appellum probatoris se subtrahunt	536
7. Si autem appellati tenuerint et finem fecerint, quod redire possunt, et esse sub plegiis .	—
8. Ubi quis appellatus per patriam fuerit deliberatus, quod habeat catalla sua . . .	538
9. Breve de replegiando aliquem, quem talis cepit, et captum detinet	—

CAP. XXXV. fol. 154 b.

1. Quod nemo potest curiam suam habere de probatore vel latrone cognoscente. Item quæ placita pertineant ad curiam, et quæ ad comitatum, et de libertatibus singulorum	538
--	-----

	Page
2. That the accused person shall first swear in words of denial, and afterwards the accuser shall swear in affirmative words	529
3. But if he shall not undertake his defence in his own person, but shall except and seek judgment, if against such a person acknowledging himself to be a larcener	531
4. If the approver has done what he promised, let the agreement be kept with him, and so in the end let him abjure the realm	533
5. If a county or a court has entertained the accusation of any plaintiff upon an approver's evidence, let the record come to the king's court under this writ	535
6. Likewise a writ to the viscount, that he produce before the king the approver and all whom he has accused of being accomplices, because several perchance withdraw themselves on account of the accusation of the approver	537
7. But, if the accused have come and made a fine, that they may return and be under sureties	—
8. Where a person accused has been acquitted by the country, that he should have his chattels	539
9. A writ for releasing on surety any one, whom so-and-so has seized and detains a prisoner	—

CHAPTER XXXV. leaf. 154 b.

1. That no one can hold his court at the instance of an approver or confessed larcener. Likewise what pleas belong to a court, and what to a county, and concerning the franchises of individuals	539
---	-----

CAP. XXXVI. fol. 155.

	Page
1. De minoribus et levioribus criminibus, quæ civiliter intentantur	544
2. Qualiter quis patitur injuriam propter suos .	546
3. In quibus casibus servi habent personam standi in judicio contra dominos suos .	--
4. Quod atrox injuria æstimatur multis modis .	--

CAP. XXXVII. fol. 155 b.

1. De vetito namii	548
2. Si vero captio fuerit injusta	552
3. Si querens queratur de utraque, scilicet cap- tione et detentione	554
4. Si dominus post legem vadiatam defaultam fecerit	556
5. Quod non potuit quis aliquid dedicere de recordo adversarii	--
6. De officio vicecomitis	558
7. Breve de attachiando, quare cepit averia, et fugavit extra comitatum	560
8. Cum vicecomes vel serviens regis visum habuerit de averiis sine impedimento .	562
9. De responsione captoris, quod juste, quia in damno suo	568
10. Si lex vadiatur ex utraque parte, ita quod querens dicat, quod juste	--
11. Item si captor dicat, quod juste	570
12. Si serviens alicujus ceperit averia alicujus in absentia domini sui	572
13. Cum averia alicujus semel fuerint per judi- cium deliberata, et iterum capta, breve quod deliberentur	574

CHAPTER XXXVI. leaf 155.

	Page
1. Of minor and lighter charges, which are brought civilly	545
2. How a person suffers an injury in respect of his relatives	547
3. In what cases serfs have a personality in court to appear against their lords	—
4. That an atrocious injury is estimated in various ways	—

CHAPTER XXXVII. leaf 155 b.

1. Of the refusal of a distress	549
2. But if the seizure has been unjust	553
3. If the plaintiff complain of both, that is, the seizure and the detention	555
4. If the lord after the wager of law has made default	557
5. That a person may not deny anything in the record of his adversary	—
6. Of the office of the viscount	559
7. A writ to attach, wherefore he has seized the beasts, and has driven them beyond the county	561
8. When the viscount or a serjeant of the king has had a view of the beasts seized without impediment	563
9. Of the answer of the seisor, that he has justly seized, because he was suffering damage	569
10. If the law be waged on either side, so that the complainant says, that he claims justly	—
11. Likewise if the seisor say, that he seized justly	571
12. If the servant of any one has seized the cattle of any one in the absence of his lord	573
13. When the cattle of any one have once been released by a judgment, and again seized, a writ that they be released	575

APPENDIX I.

	Page
Item nova capitula de tempore regis Edwardi, filii regis Henrici tertii	584

APPENDIX II.

Item capitula tangentia prima statuta Westm in anno regni regis Edwardi, filii regis Henrici, tertio	596
--	-----

APPENDIX III.

Placita apud Westm coram domino rege in Octabis Sancti Michaelis anno regni ejus decimo octavo	606
--	-----

APPENDIX I.

	Page
Likewise the new articles of the time of king Edward, the son of king Henry III. . . .	585

APPENDIX II.

Likewise the articles touching the first statutes of Westminster in the third year of the reign of king Edward, the son of king Henry III. . . .	597
--	-----

APPENDIX III.

Pleas at Westminster before the lord the king in the octaves of St. Michael in the eighteenth year of his reign	607
---	-----

HENRICI DE BRACTON
DE
LEGIBUS ET CONSUEUDINIBUS ANGLIÆ.

HENRICUS DE BRACTON
ON THE
LAWS AND CUSTOMS OF ENGLAND.

2/H 671. Wt. B 444.

A

HENRICI DE BRACTON
DE
LEGIBUS ET CONSUECUDINIBUS ANGLIÆ.
LIBER SECUNDUS.

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CAP. XXXVII.

1.  
De custo-  
dia hære-  
dum.

Dict' est supra de hæredib<sup>9</sup> majorib<sup>9</sup> institutis, & qui teñtur ad homagia & relevia, & qui ad fidelitatē: nunc autē dicend' est de illis qui minores sunt & infra ætatē, & quos oportet esse sub tutela & cura alioꝝ, eò q se ipsos regere nō norūt, & quorū quidā debent esse sub custodia dñr cū terris & teñtis, q̄ sunt de feodo eoꝝ, & quidā sub custodia parenĩ & pxi-morū consanguineoꝝ, ut p̄dict' est; et quib<sup>9</sup> dātur cus-todes aliquando de jure de antiquo feoffaĩto, & ali-quādo curatores ab homine, ubi quis aliq feoffaverit infra ætatē existentē, cū ipse curator esse non possit similiter & custos. Quia cōpetit aliquādo dño capitali custodia terræ q̄ est de feodo suo p se & nō custodia hæredis nec maritag', cū hæres fuerit maritand<sup>9</sup>, & quādoq, cōpetit dño custodia utriusq. Itē sunt hæ-redes, de quib<sup>9</sup> constat quòd majores sunt, & de quib<sup>9</sup> constat q minores, & de quib<sup>9</sup> dubiū erit, utrū majores

THE SECOND BOOK  
OF  
HENRICUS DE BRACTON  
ON THE  
LAWS AND CUSTOMS OF ENGLAND.

CHAPTER XXXVII.

We have spoken above of heirs instituted of full age and who are bound to homage and reliefs, and who are bound to fealty. Now we must speak of those who are minors and under age, and who ought to be under the wardship and curatorship of others, because they do not know how to govern themselves, and of whom some ought to be under the custody of a lord, with the lands and the tenements, which belong to their fiefs, and some under the custody of relatives and the nearest kinsfolk of blood, as has been said above. And to whom are given sometimes guardians of right under an ancient feoffment, and sometimes guardians by man, where a person has enfeoffed any one who is under age, when he himself cannot be at the same time curator and guardian; because a chief lord is sometimes entitled by himself to the custody of the land, which is of his fief, and not to the custody of the heir, nor to the maritage when the heir is to be married, and sometimes the lord is entitled to both. Likewise there are heirs, of whom it is certain that they are of full age, and others of whom it is certain that they are under age, and others of whom it is doubtful whether

1.  
Of the  
custody of  
heirs.

sunt vel minores, in quo casu, cū constiterit q̄ minores sunt, sub custodia dñōr remanebunt de feodo militari, donec plenā habuerint ætatē, vel alioī secund' diversa genera teñtoī. Si autē dubium fuerit utī majores fuerint vel minores, in hoc dubio, in custodia remanebūt, donec constiterit de ætate.

2.  
f. 86 b.  
Item de  
ætate  
hæredum,  
et quod de  
feodo mili-  
tari in  
sockagio  
potest et  
debet re-  
spondere,  
sicut pe-  
tere.

Sunt autem diversæ ætates, secund' diversitatē hæred' & teñtoī. De feodo verò militari, habebit heres plenā ætatem cū 21. annū īpleverit & 22. attigerit. Si vero fuerit hæres & filius sockmāni, tunc demū, cū 25. annos cōpleverit. Si autē filius burgensis, tunc ætatem habere intelligitur, cū denarios discretē sciverit numerare, & pannos ulnare, & alia negotia similia paterna exercere. Sed sic nō definitur cerī temp<sup>9</sup>, sed p̄ sensū & maturitatem suā. Fœmina verò plenæ esse poterit ætatis in sockagio oñi casu, cū possit & sciat domui suæ disponere, & ea facere q̄ ptinent ad dispositionem & ordinationē dom<sup>9</sup>, ut sciat q̄ ptineāt ad cone & keye,<sup>1</sup> q̄ quidem esse nō poterit ante quart' decimū annū vel decimū quint', quia hñodi ætas requirit discretionem & sensū. Item vires requirit ætas sockagii & discretioñ & sensū, & secund' q̄ hæres sockmāni possit & sciat ea exercere, q̄ ptinent ad agriculturā. Item majores vires, & majorem sensū, & discretionem requirunt eo, q̄ ptinent ad servitia militaria, ut hæres

<sup>1</sup> "Cone & keye," such is also the reading of MS. Rawl., C. 160.

they are of full age or under age, in which case, when it is established, that they are under age, they will remain under the guardianship of their lords in the case of a military fief, until they arrive at full age, or of others according to the different kinds of tenements. But if it be doubtful, whether they be of full age or under age, they will remain under guardianship, until it is established respecting their age.

But there are different ages according to the difference of heirs and of tenements. In the case of a military fief the heir will have full age, when he has completed his twenty-first year, and has touched his twenty-second. But if he be the heir of a sockman, he will be of age then, when he has completed twenty-five years. But if he be the son of a burgher, he is then understood to have [full] age, when he knows how to count pence rightly, and to measure cloths by the ell, and to perform other like business of his father.<sup>1</sup> But thus no certain time is defined, but it is [determined] by his sense and maturity. But a woman may be of full age in sockage in every case, when she can and knows how to arrange her house and those things which belong to the arrangement and management of her house, that she may know what pertains to "cone and keye," which cannot be before her fourteenth or fifteenth year, for this kind of [full] age requires discretion and sense. And the [full] age of sockage requires strength and discretion and sense, and according as the heir of a sockman can and knows how to exercise those things, which appertain to agriculture. Likewise those things which appertain to military services require greater strength, and greater sense and discretion, as an heir for instance in military service

2. Likewise respecting the age of heirs and in the case of a military fief. In sockage one may and ought to be a defendant as well as a plaintiff. f. 86 b.

<sup>1</sup> This test of capacity, namely, knowledge how to count and measure, was common in many boroughs. See Year Book, 32 & 33 Edw. I.,

App. p. 511, Rolls edition. "Cone and keye" is, probably, not so correct a reading as "coffer and keye," which occurs in some MSS:

vid. in servitio militari tal' habeat robustatem, q possit arma portare, q sufficiāt ad officiū suū militare secundū diversa genera teñor & servitior. Itēm est ætas placitādi & petendi restitutionē ppriæ seysinæ, vel alicuj<sup>9</sup> antecessoris. Et est ætas placitādi & petendi pprietatem, & respondendi sup pprietatem, quia qualitercunq, acquirere possit possessionem infra ætatē, ante plenā ætatē 21. añ non respondebit, nec iplacitabit, nec etiā iplacitabitur sup pprietate, respōdendo in feodo militari, licet possit aliquādo petendo in sockagio ; potest & debet respondere, sicut & petere, cū plenæ ætatis fuerit. Et hæc vera sunt nisi iplacitat<sup>9</sup> fuit de facto suo pprio, & si feoffat<sup>9</sup> fuit infra ætatem, vel si fecerit disseysinā, quādo autem petere possit minor, cū sit infra ætatē, & quid, & quādo respōdere, dicetur infrā pleni<sup>9</sup> de exceptionib<sup>9</sup> q pveniūt ex minori ætate in placitis & assisis.

3.  
De ætate  
feminae.  
Britton,  
III., ch. ii.  
§ 5.  
Fleta 6.

Fœminā verò hæres, & mascul<sup>9</sup> secundū quosdā, ad paria judicātur quoad oīs ætates, secundū diversitatē teñtor, sc. q habeat ætatem burgagii sicut mascul<sup>9</sup>, & sockagii sicut mascul<sup>9</sup>, sc. 15. anno, & feodi militaris sicut mascul<sup>9</sup> sc. 21. añ, & q tunc primò finiatur custodia ; secundū alios verò dicitur fœmina habere plenā ætatem, cū 15. annos (q veī est) cōpleverit, quoad feod' militare, tunc enī poterit, ut dicunt, domui suæ disponere, & nubere viro, qui possit p se vel p alium militaria exercere, & ideò prius ad ætatem pvenerit, quia magis doli capax est q masculus, & quia maturiora sunt vota mulieris q viri. Sed si ita esset, sic plenā ætatem haberet, cū esset duodec. anno, quia

ought to have such a robustness, that he can bear arms, which are sufficient for his military duty according to the different kinds of tenements and services. And there is an age of pleading and of claiming restitution of one's own seysine, or of that of an ancestor. And there is an age of pleading and of claiming property, and of responding [in a suit respecting property], for in whatsoever manner a person may acquire property when under age, he cannot be made a defendant before the age of twenty-one; nor shall he implead or be impleaded respecting property, as respondent in a military fief, although he may sometimes, as claimant in sockage. He may and ought to respond, as well as to claim, when he shall be of full age. And these things are true unless he is impleaded respecting his own act, or if he has been enfeoffed when under age, or if he has made a disseysine; but when a minor may claim, since he is under age, and what and when he may respond, will be stated below more fully on the subject of exceptions, which arise from minority in pleas and in assises.

A female heir and a male are according to some reckoned upon an equality as regards all ages according to the diversity of tenements, provided that the female has the full age of burgage like a male, and the full age of sockage like a male, that is, fifteen years, and the full age of a military fief like a male, that is twenty-one years, and that their wardship is first finished: according to others however a female is said to have full age, when she has completed fifteen years (which is true) as regards a military fief, for then she may, as it is said, provide for a home, and be married to a man who can either by himself or by another perform military duties, and therefore she comes of age earlier, for she is more wily than a male, and because the desires of a woman are earlier than those of a man. But if it were so, then she would be of full age when she was of twelve years because she has then a desire for the male and can support

3.  
Of the full  
age of a  
woman.

Britton,  
l. iii. ch. ii.  
§ 5.  
Fleta 5 b.

f. 87.

tunc esset viri potens & posset vir sustinere, p quod videtur, quod quoad ætatē nō sit differentia inter mascul' & fœminā, quod falsū est. Sed si ita esset, tunc sequeretur istud inconueniens, quodd infra legitimā ætať novem & unius anni, posset placitare & implacitari p breve de recto, & respondere ante tempus legitimum, & cū esset quatuordecim vel quindecim annorum, & unde videtur, quodd talis ætas intelligenda sit de sockagio, & non de feodo militari, quia in tali ætate potest disponere domui suæ & habere cone & keye, & septimo anno consentire matrimonio, & virum sustinere anno duodecimo. Plenam itaq, custodiam habent domini capitales feodorum suorū omnium, sine psonis hæred, quandoq, cū personis eorum, & ita quodd inde plenam habent dispositionem, in ecclesiis conferendis cū vacaverint, & in custodiis concedendis, dādis, & vendendis, & in mulierib<sup>9</sup> maritādis, & maritagiis vendēdis, si q fuerūt maritādæ, & generaliter de oñb<sup>9</sup> disponere, ad cōmod' hæredis, sicut de ppiis essent disposituri, & meliùs si fieri possit. Et vendere possunt custodiā terrarū, & maritag' hæred' si non fuerint maritati, sed de hæreditate nihil possunt alienare, vel offendere possūt<sup>1</sup> ad remanentiā. Hæredes autē quādiu fuerint in custodia p quantitate hæreditatis honorificè exhibebunt, & debita hæreditaria acquietabūt p quantitate hæreditatis, & p rata, secund' temp<sup>9</sup> custodiæ. Negotia vero hæred' agere possunt, & de eo' jure acquirendo, in quib<sup>9</sup> minorib<sup>9</sup> placitare licet, placitum movere & psequi de jure possessorio, ppiæ seysinæ videlicet, vel alicujus antecessoris: sed super recto in causa pprietatis, p illis agere non possunt, nec respondere, nisi hoc sit in casu, sc. de aliquo, de

<sup>1</sup> "Vel offendere possunt" omitted MS. Rawl. C. 160.



[intercourse with] the male, from which it seems, that as regards age, there is no difference between the male and the female, which is false. But if it were so, then there would follow this inconvenience, that below the legitimate age of nine years and one, she might plead and be impleaded by a writ of right, and respond before the legitimate time, and when she was of fourteen or fifteen years, and hence it seems, that such age is understood of sockage, and not of a military fief, because at such age she can manage her house and have "cone and keye," and in her seventh year consent to matrimony, and support intercourse with a male in her twelfth year. The chief lords have thus full wardship of all their fiefs without the persons of the heirs, and sometimes with their persons, and so that they have the free disposal thereof, in conferring churches, when they are vacant, and in granting, giving, and selling wardships, and in marrying women, and in selling marriages if there are any women to be married, and generally to dispose of everything for the advantage of the heir, as they would dispose of their own things, and better, if they can. And they may sell the wardship of the lands, and the marriages of the heirs, if they are not married, but they cannot alienate any part of the inheritance or they may offend as regards a remaindership. But they shall honourably maintain the heirs, who are in their wardship, according to the value of the inheritance, and they shall acquit the hereditary dues according to the quantity of the inheritance, and proportionately according to the time of the wardship. They can also transact the business of the heirs and may move pleas to acquire their rights for them, in matters in which it is allowable for minors to plead and to prosecute a right of possession, for instance of his own seysine or of that of an ancestor, but they cannot bring an action for them on a question of right in a cause of property, nor respond [in an action], unless it be in a case for instance concerning some property with which

f. 87.

quo minor infra ætatem fuit feoffatus. Si verò minor de feloniam infra ætatem fuerit appellatus, p̄ salvos & securos plegios attachiabitur, sed dum fuerit infra ætatem inde respōdere nō tenebitur, sed tunc demū cum major sit factus. Item custos, quādiu custodiā terræ habuerit, sustentet domos, parcos, vivaria, stagna, molendina, & cætera omnia ad terram illam ptinentia, & de exitibus ejusdē terræ reddat hæredi, cū ad plenā ætatē p̄venerit, terrā illam suā totā instauratā de carucis & oīb<sup>9</sup> aliis, & saltem non minùs q̄ secund' quod illā instauratam invenit. Item nihil capiet de terra hæredis, dū fuit infra ætatē, nisi rationabiles exitus, & rationabiles consuetudines, & rationabilia servitia, & hæc sine destructione & vasto hominum & reŕ, q̄ si fecerit, sive p̄cedat phibitio sive non, amittet custodiam, & emendabit damnum, & tradetur terra p̄pter delictum talibus discretis & legalibus hominib<sup>9</sup> de feodo illo, vel p̄pinq̄iorib<sup>9</sup> consanguineis, secund' q̄ inferiùs dicetur de actionib<sup>9</sup>. Si autem dñs rex, quacunq̄ de causa, custodiam alicujus terræ habuerit, & illam vicec. vel alteri tradiderit, quī de exitibus regi debeat respondere, & talis destructionem fecerit & vastum, ille dñs rex a tali capiat custodiam & emendā, & terra cōmitatur duobus legalibus & discretis hominibus de feodo illo, qui de exitibus respondeant domino regi, vel ei, cui dominus rex illos exitus assignaverit. Si autem illā dederit vel vendiderit alicui, qui destructionem vel vastū inde fecerit, amittet custodiā illā, & tradetur duobus, ut p̄dictum est.

4.  
Si plures  
sint domini  
capitales,  
et unus

Cū sit hæres masculus vel fœmina, & plures dñi capitales, omnes maritagiū hæredis habere non possunt,

the minor was enfeoffed when under age. But if the minor be accused of felony, when under age, he shall be attached by safe and certain sureties, but whilst he is below age he shall not be compelled to answer, but then only when he has come of age. Likewise the guardian, as long as he has the custody of the land, should keep up the houses, parks, stews, ponds, mills, and all other things appertaining to the estate, and with the rents of that land should restore to the heir, when he has arrived at full age, the whole of his land stocked with ploughs and all other implements, and at least not less so stocked than as he received it. Likewise he shall take nothing from the land of the heir, whilst he was under age, except reasonable rents, and reasonable customs, and reasonable services, and these without destruction or waste of men and things, which if he should make, whether a prohibition is issued or not, he shall lose the guardianship and shall make good the damage, and the land on account of such delinquency shall be handed over to certain discreet and loyal men of that fief, or to the next kinsfolk by blood, according to what will be said below about actions. But if the lord the king for any cause has had the custody of a certain land, and shall have delivered it to a sheriff or to another, who should answer respecting the revenues to the king, and that person has committed destruction and waste, let the lord the king take from such a one the guardianship and a fine, and let the land be entrusted to two loyal and discreet men of that fief, who shall answer to the king respecting the revenues, or to him to whom the king has assigned those revenues. But if he has given or sold it to anyone, who has caused destruction or waste therein, he shall lose the wardship, and it shall be delivered to two discreet persons, as aforesaid.

When the heir is male or female, and there are several chief lords, all cannot have the maritage of the heir, <sup>4.</sup> If there be several chief lords, and one

tenens, ad quem pertinet maritagium hæredis. licet omnes jus habuerint in maritagio, eò quòd, talis hæres tenuerit de quolibet per servitium militare.

5. Unus tamen plurium p̃fertur oñb<sup>2</sup>, & maj<sup>2</sup> jus habet in maritagio, sc. primus feoffator dominus capitalis, de quo antecessor hæredis suum primū habuit feoffamentum, & cui p̃ omnibus aliis fecit legeantiam. Sed custodia terrarum aliis dominis remanebit, quæ sunt de feodo illorum cum servitiis, sed si aliquis hæres terram aliquā tenuerit de dño rege in capite, sive alios dominos habuerit sive non, dñs rex aliis præfertur in custodia hæredis, & sive ipse hæres ab aliis priùs fuerit feoffatus sive posterius, cum rex parem non habeat, nec superiorem in regno suo. Cum igitur dominus rex aliis p̃feratur tam in custodia terræ de cujuscunq; feodo fuerit ut supradictū est, si aliquis tenuerit de eo hæreditatē aliquā p̃ feodi firmā, sockagiū vel burgagiū, & de alio teneat terrā p̃ servitiū militare, nō habebit rex custodiā hæredis vel terræ alicujus, quā tenet de alio p̃ servitiū militare, nec etiā occasione parvæ alicujus serjantiæ, quā tenuerit de dño rege p̃ servitiū reddendi ei cultellos, vel sagittas vel hujusmodi. Itē si dñs rex tenuerit aliquā baroniā vel aliā terrā ut eschaetā suā, sc. ubi hæres non apparuerit ppter defect' vel ppter delict', vel si hæredes extiterint, cū nō sunt ad fidem domini regis, sicut de terris Normannorū & Flandrentiū,<sup>1</sup> & aliquis tenens de tali baronia vel altera terra moriatur, hæres ejus non dabit aliud releviū dño regi, nec aliud faciet servitium, q̃ faceret baroni vel Normāno, si illa esset in manu baronis vel Normanni, nec eam tenebit alio modo q̃ baro eā tenuit, vel Normannus, nec occasione talis baroniæ, vel eschaetæ, habebit domin<sup>2</sup> rex aliquā eschaetā, vel custodiam

f. 87 b.

Quod maritagium pertinet ad antiquiorem feoffatorem.  
Britton, iii.  
ch. ii. § 2.  
Fleta 10.

<sup>1</sup> "Flandrensium," MS. Rawl. C. 160.

although all may have a right to the maritage because the said heir holds of each by military service.

tenant, to whom belongs the maritage of the heir.

One, however, of several is preferred to all, and has a greater right to the maritage, namely the chief lord who is the first enfeoffer, from whom the ancestor of the heir had his first enfeoffment, and to whom he did allegiance in preference to all others. But the custody of the lands will remain with the other lords, which are of their fief with services, but if any heir holds some land of the lord the king in chief, whether he has other lords or not, the king is preferred to the others in the custody of the heir, and whether the heir himself was enfeoffed first or afterwards by the others, since the king has no peer nor superior in his realm. Since then the king is preferred to others as well in the custody of the land of whosoever's fief it may be, as above said, if any one holds of him any inheritance in fee-farm, sockage, or burgage, and holds from another person by military service, the king shall not have the custody of the heir nor of any land which he holds from another by military service, nor on pretext of any petty serjeanty, which he holds from the lord the king by the service of rendering to him knives or arrows or such like. Likewise if the lord the king has held any barony or other land as his escheat, that is, where the heir has not appeared, owing to failure or to delinquency, or if there be heirs who are not in the fealty of the lord the king, as for lands in Normandy or in Flanders, and some one holding from such a barony or other land dies, his heir will not pay any other relief to the lord the king, nor do him any other service than what he did to the baron or the Norman, if it was in the hands of a baron or of a Norman, nor will he hold it in any other manner than that, in which the baron or the Norman held it, nor on pretext of such barony or escheat shall the king have any escheat, or the custody of the men tenants of that

5. That the maritage belongs to the most ancient enfeoffe .

f. 87 b.

Britton,  
l. iii. ch. ii.  
§ 3.  
Fleta 6.

hominum de baronia illa vel eschaeta tenentium, nisi alibi tenuerit alia tenementa de domino rege in capite, ille qui tēntum tenuerit de baronia illa vel eschaeta, nisi sit ita q ipse dñs rex tales feoffaverit de eadem baronia vel eschaeta, de aliqua parte tenendā de eo hæreditariè, purè & sine aliqua conditione, & ad quam warrātizandam obligavit se & hæredes suos. Si autem tenuerit quis de domino rege serjantiam magnam vel parvā, habebit rex custodiam, ac si de eo teneretur p servitium militare. Magna autem dici poterit secund' quosdā, ut si valeat c. s. & si tantum, habebit rex custodiam om̃ium aliorū, etiam si valerent m. marc. & cū tali ratione sint alioꝝ feoda in manu dñi regis, p̃dicta ratione alii capitales domini feodorum illorum nihil exigere possunt de terris & tenementis illis, nec in servitiis nominatis, nec in auxiliis ad filiam maritandā, aut filiū primogeniū militem faciendū, vel etiā sectis, quamdiu terræ fuerunt in manu & custodia domini regis, sed p̃cipietur vic. quòd p hujusmodi dis-  
 tringere non pmittat. Parvæ autem serjantiæ dici poterunt, quæ sunt dimidium marc. vel 5. s. ut si quis teneatur invenire domino regi equum & saccum cum brochia<sup>1</sup> eunti in Walliam cum exercitu & hujusmodi, ut de termino San. Hiſ. anno reg. H. decimo septimo in com̃ Kanſ, de Warino de Monte Canis. & Roberto de Hucham. Item per servitium equitandi cum dñis & dominabus, vel tenendi curiam, vel portādi br̃ia, vel hñmodi.

Britton, *ib.*,  
§ 5.  
Fleta, *ib.*

<sup>1</sup> "Saccum cum brochia," MS. Rawl. C. 160; "sellam cum brothia," MSS. varia.

barony or escheat, unless he, who held a tenement of such barony or escheat, held other tenements elsewhere of the lord the king in chief, unless it should be that the lord the king himself enfeoffed such persons with the same barony and escheat, of some part to be held of him hereditarily, absolutely, and without any condition, and to warrant which he had obliged himself and his heirs. But if any one has held from the lord the king a great or petty serjeanty, the king shall have the custody, as if it was held from him by military service. But according to some it may be called great [serjeanty] if it is worth one hundred shillings, and if so much, the king shall have the custody of all the others, although they may be worth one thousand marks; and since by such reason the fiefs of others are in the hands of the king, for the same reason the other chief lords of those fiefs can exact nothing from those lands and tenements, neither in the services named, nor in the aids to marry a daughter or to make the eldest son a knight, nor even in [the case of] sects, as long as those lands are in the hand and custody of the lord the king, but let the sheriff be enjoined that he should not permit a distraint for such like purposes. But petty serjeanties may be termed such as are worth half a mark or five shillings, as if a person be bound to find for the lord the king a horse with a sack<sup>1</sup> and a brooch when going into Wales with an army, or such like, as in a case in St. Hilary's term in the seventeenth year of the reign of King Henry, in the county of Kent, concerning Warin de Monte Caniso and Robert de Hucham. Likewise by a service of riding with the lords or the ladies, or of holding a court, or of carrying writs, or such like services.

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<sup>1</sup> The same phrase occurs in fol. 36 with the same various readings. The term "brochia" is thought by some to mean a brooch or pin to

fasten the mouth of the sack; by others it is interpreted to mean a flagon : see Ducange, Glossar.

6. De hærede sockmanni, sub cuius custodia esse debet. Hæres verò sockmāni, mortuis antecessorib<sup>3</sup> suis, sub custodia capitaliū dñi nō erunt, sed sub custodia cōsāguineorū suorū ppinquiorū, hoc est eorū qui cōjuncti sunt jure sāguinis, & nō jure successionis, hoc est ppinquiorum hæred', quibus posset aliquod jus descendere, sive ppinquiores sunt, sive ppinqui, sive remoti, & illis cōpetit custodia, ex parte quorū non descendit hæreditas, ut si descendat ex parte patris, ptinet ad matrē custodia, cū sit parens ppinquior, ppter ppinquitatem sanguinis, qua deficiente, vocatur pater matris vel mater, & illis deficientibus frater vel soror, & deficientibus illis, avunculus vel amita. Si autem hæreditas descendit ex parte matris, tunc fiat è contrario. Et regulariter verum est, q̄ nunquam remanebit aliquis in custodia alicujus, de quo haberi posset suspitio, q̄ velit jus clamare in ipsa hæreditate, & unde si plures sint filiæ & hæredes, & tenere debeant in sockagio, nulla debet esse in alteri<sup>2</sup> custodia, sed sint in custodia consanguineorū, modo quo p̄dictum est. Si autem tenere debeant p̄ servitium militare, omnes erunt sub custodia dñi capitalis, & nulla earū sub custodia alterius, ppter p̄dictam suspicionem, & donec plenā habuerit ætatem. Et cū quælibet illarū ad ætatem pvenerit, tenetur dñs earū eas maritare, singulas cum suis rationabilibus portionibus, & si ab initio oīes majores extiterint, nihilominus in custodia domino erunt, donec per consilium & dispositionem domino maritentur, quia sine ipso dispositione & assensu, mulier hæreditatem habens maritari non potest, nec etiam in vita antecessorum de jure, sine assensu dñi capitalis, quod si olim fecissent, hæreditatem amitte-

f. 88.



But the heir of a sockman, upon the death of his ancestors, will not be in the custody of chief lords, but under the custody of his nearest of blood kinsfolk, that is, of those who are united to him by right of blood, and not by right of succession, that is of near heirs, to whom some right might descend, whether they are next, or near, or remote, and those are entitled to the custody, from whose side the inheritance does not descend, as if it descend from the father's side, the custody belongs to the mother, since she is the next relative, on account of proximity of blood, failing whom, the father or the mother of the mother is called, and failing them, the brother or the sister, and failing them, the uncle or the aunt. But if the inheritance descends from the mother's side, then let it be done in the contrary manner. And regularly it is true that no one shall remain in the wardship of any one, of whom a suspicion may be entertained that he would wish to assert a right to the inheritance itself, and hence if there are several daughters and heirs, and they ought to hold in sockage, none of them ought to be in the custody of the other, but let them be in the custody of their kinsfolk in the manner aforesaid. But if they ought to hold by military tenure, all will be under the wardship of their chief lord, and none of them under the wardship of the other on account of the suspicion above mentioned, and until she has full age. And when any one of them comes to full age, their lord is bound to provide a husband for them [and to provide] each with a reasonable marriage portion, and if they are all of full age from the commencement, nevertheless they shall remain in the wardship of their lords, until through the counsel and arrangement of their lords they are married, because without their arrangement and assent a woman having an inheritance cannot be married, nor even in the life of her ancestors of right, without the assent of the chief lord, which if they had done formerly, they

6.  
Of the  
heir of a  
sockman,  
under  
whose cus-  
tody he  
should be.

f. 88.

rent sine spe recuperandi, nisi solùm p gratiam, hodiè tamen aliam pœnam incurrunt, sicut inferiùs dicetur, & hoc idèd, ne cogatur dñs homagium capere de capitali inimico, vel de alio minimè idoneo. Cùm autē quādocunque licentia & consensus domini requiratur, tenetur dominus consentire, aut justam causam ostendere, quare consentire non deberet, & cùm nullam causam ostenderit nec consentire velit, possit mulier, de consilio parentum, impunè & licitè maritari. Ex hoc autem sequitur quæstio, si mulier dotem habens, possit p voluntate sua alicui nubere, pter assensum warranti sui de dote sua, & si fecerit, si debeat dotem suam amittere, cùm maritus suus inde nullum homagium warranto suo teneatur facere, sed cum affidavitione fidelitatem tantùm, cùm olim ex tali causa dotem amitteret, nunc tamen non amittet. Cùm fœmina plenæ ætatis hères extiterit, & de feodo plurium domino tenere debeat, tunc sufficiet ad se maritandum, requirere assensum dñi capitalis primi feoffatoris, & cui antecessores sui fecerint ligiantiam. Item cùm semel legitimè maritata fuerint, & postea viduæ effectæ, iterum non tenebuntur sub custodia domino, licèt teneantur assensum eorum requirere maritandi se: p̃dicta ratione solet dici aliquando, q putagium hæreditatem non adimit generaliter, sed hoc non esset intelligend' de putagio filia & hæred', sed de putagio matris, quia filius hæres legitim<sup>9</sup> est, quādo nuptiæ demonstrāt, quia p̃sumitur quis esse filius, eò q nascitur ex uxore, dū tamen talis nō sit p̃sūptio q admittat p̃bationē in cōtrariū, secūd' q suprā in parte dict'

Britton  
l. iii. ch. ii.  
§ 17.  
Fleta 13.

would have lost the inheritance without hope of recovery, unless solely through grace; in the present day, however, they incur another penalty, as will be stated below, and that for this reason, lest the lord should be obliged to receive homage from his enemy or from another unsuitable person. But since whenever the license and consent of the lord is required, the lord is obliged to consent, or to show just cause, why he ought not to consent; and when he shows no cause, nor is willing to consent, the woman may, upon the advice of her relatives, marry with impunity and licitly. Upon this indeed follows the question, if the woman, having a dowry, may marry anyone at her pleasure, on account of the assent of her warrantor as to her dowry, and if she do so, if she ought to lose her dowry, since her husband is not thereupon bound to do any homage to her warrantor, but only fealty with affidation, although formerly she would have lost her dowry from such a cause, now, however, she will not lose it. When a female of full age has become an heiress, and ought to hold in fee of several lords, then it will be sufficient to enable her to marry, that she should require the assent of the chief lord the first feoffor, and to whom her ancestors did allegiance. Likewise when they have once been legally married and afterwards have become widows, they shall not again be bound under the wardship of lords, although they shall be bound to obtain their assent to their marrying: for the aforesaid reason it is sometimes usual to say that whoredom does not take away generally the right of inheritance, but this is not to be understood of the whoredom of daughters who are heiresses, but of the whoredom of a mother, because a son is the legitimate heir when marriage points him out, inasmuch as a person is presumed to be a son from the fact that he is born from a man's wife, provided, however, the presumption is not such as to admit of proof to the contrary, according to what has been said above in part.

est. In custodia sockagii, ubi plura sunt feoffam̃ta teñdi in sockagio, nō erit requirēd' de prioritate vel de posterioritate feoffam̃torū, cū tant' un<sup>9</sup> sit custos, & cōsanguinitatis jure, parens p̃pinquior. Nec mult' refert utrum talis legitimus sit, vel bastardus, & hæc vera sunt, q̃ locum non habebit prioritas & posterioritas, nisi ita sit de consuetudine, q̃ ad dños capitales p̃tinere debeat custodia, & maritagium de sockagio, sicut de feodo militari, sicut observatur in episcopatu Wynt. & alibi. Et unde si plura sint feoffamenta in sockagio, & à pluribus, ubi talis observatur consuetudo, erit ad prioritatem recurrendum. Et si non nisi unus, talis dominus capitalis, qui tale habeat privilegium, & alibi unus vel plures sint dñi, non credo in hac parte privilegium esse præferendum. Esto etiam quòd quis de uno tenuerit in sockagium, & de alio per servitium militare, quæritur quis capitalium dominorum præferri debeat in maritagio? & verum est quòd ille qui feofavit per servitium militare, nec erit habend<sup>9</sup> respectus ad prioritatē tēporis, vel posteritatē p̃pter privilegiū militare. Itē retento primo casu, si cōtingat q̃ ex parte patris descēdat hæreditas, q̃ tenetur p̃ serviitiū militare, & ex parte matris in sockagio, vel è cōtrario si cōtentio fiat de maritagio hæredis, in cujus p̃sona cōjungi debeāt illæ duæ hæreditates, ille in maritagio p̃ferendus erit, cuj<sup>9</sup> feod' pri<sup>9</sup> fuerit deliberať, secund' q̃ inferiùs pleni<sup>9</sup> dicetur. In fine vero notand', q̃ nō potest quis, qui sub custodia alterius est & infra ætatē, habere aliū, qui infra ætatē fuerit sub custodia sua: quia regulariter verū est q̃ alios regere non potest, qui seipsum regere non novit. Nec p̃tinebit maritagiū ad ipsum, qui fuerit custos ejus de quo ipse debuerit tenere, nisi tenement' illius minoris fuerit de feodo

f. 88 b.

In the wardship of sockage, where there are many feoffments of a holding in sockage, it will not be requisite to inquire into the priority or the posteriority of the feoffments, since there is only one guardian, and in right of consanguinity the nearest relative. Nor does it much matter whether such a person be legitimate or a bastard, and these things are true, that priority or posteriority will have no place, unless it be so by custom, that the custody ought to appertain to the chief lords and the maritage in the case of sockage, as in the case of a military fief, as is observed in the bishopric of Winchester and elsewhere. And hence if there are several feoffments in sockage and by several [feoffors], where such custom is observed, recourse must be had to the first [feoffor]. And if there be only one such chief lord, who has that privilege, and elsewhere one or more are lords, I do not think the privilege is to be maintained in this part. For let it be that a certain person holds of one in sockage, and of another by military service, it is asked who of the chief lords is to be preferred in the maritage, and it is true that he is to be preferred, who has feoffed by military service, nor is respect to be had to priority of time, or to posteriority on account of the military privilege. Likewise in retaining the first case, if it should happen that the inheritance, which is held by military tenure, descends by the father's side, and on the mother's side by sockage, or the contrary, if a contention arises concerning the maritage of the heir, in whose person those two inheritances ought to be united, he is to be preferred as to the maritage, whose fief was first delivered, according as will be explained more fully below. But it is finally to be noted that no one, who is in the custody of another and is under age, can have another who is under age in his custody, for it is true as a rule that no one can govern others, who cannot govern himself. Nor will the maritage belong to him, who is the guardian of him, from whom he ought to hold, unless the tenement of the

f. 88 b.

ipsius custodis. Si autē de alteri<sup>o</sup> feodo quā ipsi<sup>o</sup> custodis, ille habebit maritagium hæredis ejus, qui feofat<sup>o</sup> fuerit p tenentē suū, & custodiā teūti, q̄ quidē tenens suus habitur<sup>o</sup> esset, si esset plenæ ætatis, licet maritagiū tenentis sui ptineret ad alium dūm suū capitalē, ratione veterioris feoffamenti. Casus Hērici de Tercy & Wilhelmi de Punchardon de hærede Rogeri de Venpel, & unde antecessores Wilhelmi feoffaverāt Rogerū Venpel de terra de Hiwisse & Reginald' & Rogerū filiū suū, & quorum hæredes simul & semel fuerunt infra ætatem, & hæres Reginaldi in custodia p̄dicti Henrici ratione terræ de Cokkeslege, & hæres Rogeri in custodia Wilhelmi, quia teneñt Reginaldi & tene-mentum Rogeri non fuerunt in feodo.

## CAP. XXXVIII.

1. Dict' est suprā de hæredibus, qui plenæ ætatis sunt, & sui juris in morte parentī, & qui infra ætatē extiterint, sub cujus custodia & cura esse debeant usq, ad legitimā ætatē, sive maritati fuerint in vita parentī sive non. Nunc autē dicend' est de illis, qui in vita parentī non sunt maritati, ad quem pertineat eorū maritagiū, secund' q fuerint sub custodia parentī vel capitalium dominoꝝ. Sed imprimis non est omittendum videre quid juris sit, cū plenæ ætatis extiterint & non maritati in vita parentī, sive masculi fuerint, sive fœminæ, ad quod sciend', q cū plenæ ætatis extiterint, tales hæredes se ipsos maritare poterunt sine injuria dominoꝝ, dum tamen si fœmina fuerit hæres &

De mari-  
tagio hære-  
dum, et ad  
quem mari-  
tagium de-  
beat per-  
tinere.

Britton,  
l. iii. ch. iii.  
Fleta, 9.

minor be of the fief of that guardian. But if it be of the fief of another than the guardian himself, he shall have the maritage of that heir, who was enfeoffed by his tenant, and the custody of the tenement which his heir would be about to have, if he was of full age, although the maritage of his tenant belongs to another chief lord by reason of an older enfeoffment. The case of Henry de Tercy and William de Punchardon concerning the heir of Roger de Venpel, and wherein the ancestors of William had enfeoffed Roger Venpel with the land of Hiwisse and Reginald and Roger his son, and whose heirs were at one and the same time under age, and the heir of Reginald was under the wardship of the aforesaid Henry by reason of the land of Cokkeslege, and the heir of Roger was under the wardship of William, because the tenement of Reginald and the tenement of Roger were not in fee.

## CHAPTER XXXVIII.

We have spoken above of heirs, who are of full age, and independent on the death of their fathers, and [of those] who are minors, under whose wardship and curatorship they ought to be until they arrive at lawful age, whether they have been married during the lifetime of the parents or not. We must now speak of those, who have not been married in the lifetime of their parents, to whom their maritage belongs, according as they are under the wardship of their relatives, or of their chief lords. But in the first place we must not omit to consider what is their right when they have come to full age, and have not been married in the lifetime of their parents, whether they are males or females, in regard to which it is to be known that, when they are of full age, such heirs may marry of their own choice without injury to their chief lords, provided, however, that if the heir is a female and marriageable, although she may be of full age, she cannot

1.  
Of the  
maritage  
of heirs,  
to whom  
the mari-  
tage ought  
to apper-  
tain.

f. 89.

maritanda, licet plenæ ætatis extiterit, se maritare non poterit sine assensu capitalis dñi, ad quem ptinere dinoscitur maritagiū, ratione paulò antedicta, ne cogatur domin<sup>9</sup>, &c. Si autem mascul<sup>9</sup> & heres & plenæ ætatis fuerit, se maritare potest quando voluerit & ubi, assensu capitalis dñi non requisito. Nulla enim poterit esse causa in masculo hærede, quare uxorem non ducat, q̄ esse possit in fœmina, cū viro nubat. Si autē cū hæres infra ætatem extiterit, & sub custodia parentū de sokagio, ppinquior cōsanguine<sup>9</sup> eum maritare poterit, sine alicujus injuria, vel aliis vendere maritagiū, dum tamen in fœmina hærede observetur, quod superius dictum est de feodo militari. Cū autem hæres minor & non maritatus extiterit sub custodia domini, masculus vel fœmina, sic ut in feodo militari, ad dñm capitalem, sub cujus custodia ipse fuerit, ptinebit maritagiū pleno jure, & ipsum maritare poterit cū voluerit, & ubi, dum tamen non disparagetur, vel vendere ei maritagiū, cui voluerit, dum tamen in vita venditoris maritetur, & eum maritare potest, non tantū semel sed sæpius, quamdiū fuerit infra ætatem, & sine uxore. Si autē dñs capitalis, cui competit maritagiū, negligens extiterit, quòd hæredem infra ætatem non maritaverit, nec ei maritagiū obtulerit, quod de jure recusare non possit, extunc cū hæres effectus fuerit plenæ ætatis & sui juris, seipsum maritare possit, sine injuria alicujus, & eodem modo, si cū capitales domini contenderent de maritagio, cū pvenerit ad ætatem. Si autem infra ætatem hæres ppria voluntate se maritaverit, vel p consilium alterius quā capitalis domini, sive sit mascul<sup>9</sup> vel fœmina: item si cū dñs capitalis ei uxorem obtulerit, quam de jure recusare non possit, & ad volūtatem domini capitalis se maritare



marry of her own choice without the assent of the chief lord, to whom the choice of a husband is decided to belong, for the reason above-said, that the lord may not be compelled, &c. But if the heir be a male and of full age, he can marry when and where he pleases, without requiring the assent of the chief lord. For there can be no cause in the case of a male heir, why he should not marry a wife, which there may be in a woman, when she is married to a man. But if, when the heir is under age, and under the wardship of relations in sockage, the nearest blood-relative may choose a wife for him without injury to any one, or sell the right of choice to others, provided, however, in the case of a female heir that is observed, which has been stated above concerning a military fief. But when the heir, being a minor and not married, is under the wardship of a lord, whether the heir be male or female, the maritage belongs in full right to the chief lord, under whose wardship he is, as in the case of a military fief, and he may choose a wife for him when he will and where, provided, however, he is not disparaged, or he may sell to him the right of marrying with whom he pleases, provided he is married in the lifetime of the seller, and he may choose a wife for him, not only once but repeatedly, as long as he is under age, and without a wife. But if the chief lord, who is entitled to the maritage, has been negligent, that he has not chosen a wife for him when under age, nor has offered him the choice of a wife, whom he could not of right refuse, then the heir, when he has come of full age, and is independent, may choose a wife for himself, without injury to any person, and in the same way as when a chief lord should contend for the maritage, when he has come to full age. But if the heir, being under age, has married of his own choice, or upon the counsel of another than his chief lord, whether the heir be male or female: likewise when the chief lord has offered him a wife, whom he cannot of right refuse, and he has been unwilling to

f. 89.

noluerit, dicendo quòd nondum voluntatem habet maritandi se, dominus in hoc non poterit necessitatem imponere, quòd hoc faciat invitus, cùm libera debeant esse conjugia, pspicitur tamen ei in hac parte, quòd ultra ætatem hæredis retineat hæreditatem, quousq, inde perceperit ad valentiam maritaggi, vel donec ei inde fuerit satisfactum aliter. Item quotienscunq, contigerit unum ex pluribus infra ætatem mori & alii sunt infra ætatem, masculi vel fœminæ, habebit dñs capitalis maritagium cujuslibet post aliū, dum fuerint infra ætatem.

2.  
Si plures et  
diversæ  
hæreditates  
sint alicui  
descendentes,  
tam ex  
parte patris,  
tam  
ex parte  
matris.

Dictum est in præcedentib<sup>9</sup> quid juris sit, si una sit hæreditas descendens à patre vel à matre tantum, & unus sit capitalis dominus. Nunc autem dicendum est, si diversæ sint hæreditates descendentes tam ex parte patris quàm ex parte matris, quæ conjungi debeant in psona unius hæredis, & utriusq, hæreditatis sit unus dominus capitalis, de quo tenetur p servitium militare, quo casu quantum ad maritagium hæredis habendum, refert cujus feodum priùs fuerit deliberatum, ita quòd hæres teneatur domino suo ad homagium, quia non poterit capitalis dominus, nec debet homagiū alicuj<sup>9</sup> hæredis capere, antequam hæreditas sic deliberata fuerit, ppter quod hæres teneatur ad homagium, & nullus alius. Item nec potest dominus capitalis ab hærede, qui plenæ ætatis extiterit, relevium petere, vel servitium aliquod, antequam homagium hæredis receperit, cùm fuerit hæreditas deliberata. Item nec alicujus hæredis, qui fuerit infra ætatem, ptinet ad ipsum custodia terræ & hæredis, & maritagium, antequam feodum suum sic fuerit deliberatum, eò quòd non duraverit homagium antecessorum. Durare autem sic poterit homagium antecessoris tota vita eorum, si ab eo non sit recessum, ut videri poterit. Esto, quòd quis

marry in accordance with the choice of his chief lord, saying that he has not at present the desire to marry, the lord cannot impose upon him the necessity to do this against his will, since marriages ought to be free, regard however is had to him in this way, that he may keep the inheritance of the heir after he comes of age, until he has received from it up to the value of the marriage, or until satisfaction has been made to him otherwise. Likewise as often as it happens that one out of many dies under age, and there are others under age, male or female, the chief lord shall have the marriage of each after the other, as long as they are within age.

We have discussed in the preceding chapters, what is the law, if there be one inheritance descending from the father or from the mother alone, and there be one chief lord. Now, however, we must discuss, if there be divers inheritances descending as well from the father's side as from the mother's side, which ought to be united in the person of one heir, and there be one chief lord of each inheritance from whom it is held by military service, in which case, as regards the having the marriage of the heir, it is of importance whose fief has been first delivered, so that the heir may be held to his lord to do him homage, because a chief lord neither can, nor ought to take the homage of any heir, before the inheritance has been so delivered to him, on account of which the heir is bound to do him homage, and no one else. Likewise the chief lord cannot claim a relief from the heir, who has come to full age, or any service, before he has received the homage of the heir, when the inheritance has been delivered. Likewise the custody of the land and of the heir, and the marriage of any heir, who is under age belongs to him, before his fief has been so delivered, because the homage of the ancestors is not lasting. But the homage of an ancestor may last all their lives, if they have not withdrawn from it, as may be seen. Let it be, that a certain person holds from

2.  
If there  
are several  
inherit-  
ances de-  
scending to  
any one, as  
well from  
the father's  
side as  
from the  
mother's  
side.

f. 89 b.

teneat de alio per homagium & per servitium militare, & concedat filio suo, quòd teneat hæreditatem ad vitam filii sui hæredis de se, vel de dominis capitalibus, et sub tali conditione, quòd si filius moriatur in vita patris, quòd hæreditas integre revertatur ad patrem tenenda ut priùs, sine conditione, vel sub conditione ad vitam suam, per talem concessionem adhuc non mutatur homagium, sed tenet inter patrem et dominum suum capitalem, quia nunquam fuit ab eo recessum, nec filius, quamvis hæres, qui non tenuit nisi ad vitam, ad homagium tenebatur. Quod quidem aliter esset si pater ab hæreditate se dimitteret, & filium hæredem instituerit.

3.  
Quando  
feodum  
alicujus  
deliberatur,  
quod ad  
dominum  
pertineat  
maritagium  
hæredis.

Videndum igitur qualiter et quando feodum alicuj<sup>9</sup> deliberatur, et sciendum quòd tunc demum deliberatur, quantum ad dominum ptinet, cùm hæres sine impedimento, vel aliquo modo<sup>1</sup> ad homagium teneatur, & nunquam deliberabitur, quamdiu duraverit homagium antecessoris: ut ecce, A. habens hæreditatem, ducit uxorem B. habentem hæreditatem, et quilibet illorum habet unum dominum capitalem, pereatur ex eis hæres cõmunis, filius vel filia, præmoriatur A. in vita uxoris, jam deliberata est hæreditas ipsius A. ita quòd ad dominum suum ptinet custodia terræ & hæredis, & q hæres teneatur ad homagium, & pinde est q dominus suus habeat maritagium. Item esto q B. uxor præmoriatur, videtur igitur sicut in casu præmisso, q feodum dñi sui de quo tenuit sit deliberatū, & q ei competat custodia terræ, et hæredis, & maritagiū, q quidem non est verum, quia adhuc durat homagium ipsi<sup>9</sup> A. factum dño capitali nomine uxoris, q in vita ipsius A. non dissolvitur, cùm tenere debeat hæreditatem uxoris suæ per legem Angliæ ad vitam suam. Et unde durante homagio ipsius A. hæres suus sub potestate sua remanebit, et capitali dño non tenebitur ad homagium vivente patre, cùm nō possit quis duo homagia de uno teneñto simul

<sup>1</sup> " Aliquo medio," MS. Rawl. 160.

another by homage and by military service, and grants to his son that he may hold the inheritance for the life of his son the heir from himself or from the chief lords, and under such condition, that if the son should die in the lifetime of the father, the inheritance should return entire to the father to hold as before, without any condition or under the condition for his life, by such a grant the homage is not yet changed, but holds good between the father and his chief lord, because he has never withdrawn from it, nor was his son, although his heir, who only held for life, held to homage. Which would be other wise, if the father released himself from the inheritance and instituted his son his heir. f. 89. b.

Let us see then in what way and when the fief of any one is delivered, and it is to be known that it is then at last delivered as far as the lord is concerned, when the heir without impediment or in any way is held to homage, and it will never be delivered, as long as the homage of the ancestor lasts; as for instance A. having an inheritance takes for wife B. who has an inheritance, and each of them has one chief lord, there is procreated from them a common heir, a son or a daughter, A. dies first in the lifetime of B., the inheritance of A. himself is now delivered, so that the custody of his land and of his heir belongs to his chief lord, and the heir is held to homage, and by parity of reason his lord has the maritage. Likewise let it be that B. the wife dies first, it seems therefore as in the first case, that the fief of her lord, from whom she held, is delivered, and that he is entitled to the custody of the land and of the heir, and to the maritage, which indeed is not true, because the homage of A. done to the chief lord in the name of his wife, is not dissolved during the lifetime of A., since he ought to keep the inheritance of his wife by the Law of England for his life. And hence as long as the homage of A. lasts his heir will remain under his power, and will not be bound to do homage to the chief lord whilst his father is living, since a person cannot take two homages for one tenement 3.  
When the fief of any one is delivered, that the maritage of the heir belongs to the lord.

capere à duobus. Quod autem dictum est, locum habet in hærede cōmuni. Si autem sunt diversi, aliud erit, ut si vir primò contraxerit cum quadam habente hæreditatem, & hærede pcreato decesserit vir, adhuc non est hæreditas deliberata vivente uxore, nec maritadium; et si postea nupserit alteri viro, vel pluribus successivè, nunquam deliberabitur custodia vel maritadium in vita sua, vel virorum, ut prædictum est. Si autem uxor præmoriatur et ipse aliam uxorem duxerit, adhuc erit illud idem dicendū de hæreditate uxoris primæ. Sed cum vir præmoriatur, deliberabitur hæreditas hæredis de alio viro. Præmori autem poterit vir vel uxor, per maj<sup>9</sup> tempus, vel minus, vel minimum, hora, vel momento, et ille dominus semper præferendus erit, cujus feodum priùs fuit deliberatum. Sed esto quòd constare non possit, quis illorum priùs moriatur, tunc recurrendum est ad antiqui<sup>9</sup> feoffamentum vel feodum, nullo habito respectu ad prioritatem deliberationis.

4. Cùm autem tam ex parte hæreditatis patris, quàm ex parte hæreditatis matris plures sunt & diversi dñi capitales, & deliberata fuerit hæreditas ex una parte, antequā utraq, hæreditas cōjuncta sit in psona uni<sup>9</sup> hæredis ex parte illa quæ deliberata fuerit, erit ille dñs præferend<sup>9</sup> qui prim<sup>9</sup> est feoffator, & dñs lige<sup>9</sup>, et cui ille antecessor, qui obiit, fecit ligeantiā. Eodē modo, cùm hæreditas utriusq, tā patris quàm matris, una vel plures, cōjuncta sit in psona uni<sup>9</sup> hæredis, adhuc erit ille pferend<sup>9</sup>, qui primò feoffavit p servitiū militare, omnib<sup>9</sup> aliis penit<sup>9</sup> exclusis, licet ibi sint infinita feoffamenta. Plures autem capitales domini feoffatoris p servitium militare jus habere poterunt in maritadium

Cum plures  
sunt do-  
mini capi-  
tales, tam  
ex parte  
patris,  
quam ex  
parte ma-  
tris.

f. 90.  
Britton,  
l. iii. ch. iii.  
§ 6.  
Fleta 10.

at the same time from two persons. But what has been said holds good in the case of a common heir. But if there be divers heirs, it will be otherwise, as if the man has first contracted marriage with a certain woman having an inheritance, and an heir having been procreated the man dies, the inheritance is not delivered whilst the wife is living nor the marriage; and if she should afterwards marry another man, or several successively, neither the custody nor the marriage will be delivered during her own life, or those of her husbands, as aforesaid. But if the wife predeceases, and the man himself takes another woman to wife, the same thing will have to be said concerning the inheritance of the first wife. But when the man predeceases, the inheritance of the heir by another husband will be delivered. But the husband or wife may die first, by a great time, or a less time, or the very least time, an hour or a moment, and that lord shall always be preferred, whose fief was first delivered. But let it be, that it cannot be established, which of them died first, then recourse must be had to the more ancient enfeoffment or fief, no regard being paid to the delivery.

But when there are several and different chief lords as well on the side of the inheritance of the father, as on the side of the inheritance of the mother, and the inheritance on one side has been delivered before each inheritance has been united in the person of one heir on that side, on which it has been delivered, that lord will have to be preferred who is the first feoffor and the liege lord to whom that ancestor, who died, did allegiance. In the same way, when the inheritance of each, as well the father and the mother, one or more, has been united in the person of one heir, he will still have to be preferred, who first enfeoffed by military tenure, to the exclusion of all the others, although there be there infinite enfeoffments. But several chief lords, who have enfeoffed by military service, may have a right to the marriage of a

4.  
When there are several chief lords, as well on the father's side, as on the mother's side.

f. 90.

alicuj<sup>9</sup>, sed non omnes obtinebunt, cùm maritagium non recipiat divisionem. Oportet igitur de necessitate, quòd un<sup>9</sup> aliis præferatur, secundùm q prædictum est.

5. Cùm autem maritagiū alicuj<sup>9</sup> hæredis petatur ab uno vel à plurib<sup>9</sup>, refert quis fuerit in seysina, utrum s. ille qui jus habet, an ille qui jus non habet, sicut mater, vel alius propinquus, parens, vel extraneus, vel unus ex pluribus capitalibus dominis, qui jus habet. Si autem ille qui jus non habet, & ab eo petatur ab aliquo domino capitali, uno vz. aut confitetur quòd habeat ipsum, aut negat. Si autem negaverit, procedatur contra ipsum, secundùm q inferiùs dicitur in tractatu de actionibus. Si autem confiteatur quòd ipsum habeat, & unus ex pluribus dominis petat, probante eo quòd antecessor hæredis de eo tenuit per servitium militare, oportet quòd tenens restituat, vel rationem ostendat quare restituere non debeat. Non enim sufficit si dicat, quòd alius majus jus habeat in maritagio, quia in ore tenentis non jacebit talis exceptio. Cùm autem sint plures, qui dicunt se habere jus in maritagio, & petunt ab uno, qui jus non habet, licèt cognoverint quòd hæredem habuerit, tamen non tenetur alicui eorum hereditatem restituere, donec ei constituerit de jure petentium, & quis eorum sit alteri præferendus, sed dicitur ei, quòd illum salvo custodiat, donec constituerit de veritate, & erit hæres ei restituend<sup>9</sup> qui prioritatem habet feoffationis & plus juris. Si autem constare non possit per aliquam pbationem, quis eorum majus jus habuerit, ppter hoc non remanebit seysina cum eo, qui nihil juris habet, sed erit transferenda ad petentes, eò quòd pbant se jus habere.

Cum autem maritagiū petatur, refert quis fuerit in seysina de hærede, utrum dominus vel extraneus.



certain person, but all shall not obtain it, since maritage does not admit of division. It is incumbent therefore of necessity, that one be preferred to the others, according to what has been said above.

When however the maritage of any heir is claimed by one or by more, it is of importance who is in seysine, whether for instance he who has the right, or he who has not the right, as the mother or another near relative, or a stranger, or one of several chief lords, who has the right. But if he who has not the right [is in seysine], and it is claimed from him by some chief lord, one for instance, he either admits that he has the right or he denies the fact; but if he denies, proceedings may be taken against him, according to what will be explained below in the treatise concerning actions. But if he admits that he has the right, and one of several lords is the claimant, upon his proving that the ancestor of the heir held of him by military service, it is incumbent that the tenant restore, or shew reason why he should not make restitution. For it is not sufficient if he should say, that another has a greater right to the maritage, for such an objection does not lie well in the mouth of a tenant. But when there are several, who say that they have a right to the maritage, and they claim from one who has not the right, although they have established that he had an heir, nevertheless he is not bound to restore the inheritance to any of them, until it has been made clear to him as to the right of the claimants, and which of them is to be preferred to the other, but he shall be told that he must keep it in safe custody, until it shall be made clear to him respecting the truth, and the heir will have to be restored to him who has the priority of the feoffment and the greater-right. But if it cannot be established by any proof, which of them has the greater right, the seysine for that reason shall not remain with him, who has not any right to it, but shall be transferred to the claimants, because they prove that

5.  
When, however, maritage is claimed, it is of importance, who is in seysine of the heir, whether the lord or a stranger.

Sed restat videre, utrum omnino debeat cum uno remanere, ut ita quòd satisfaciatur alteri de medietate valoris, vel quòd uni ex toto remaneat sine satisfactione, cùm maritagium divisionem non recipiat. Videtur quòd uni remanere debeat ex toto, sine aliqua recompensatione medietatis, si pbari possit, quis eorū ultimò fuit in seysina. Si autem non, et omnino deficiat pbatio, videtur quòd ille præferri debeat, qui primò instituit actionem. Esto etiam, quòd unus ex pluribus capitalibus dominis, qui jus habet in maritagio, fuit in seysina, & unus vel plures petant maritagium, ille, qui tenet, in seysina remanebit, donec constiterit quis eorum maj<sup>9</sup> jus habuerit in maritagio. Non sufficit enim q petentes pbent se jus habere, omnes vel quidam eorum, ad hoc, quòd auferatur possessio à tenente, nisi sit qui pbet se majus jus habere: paritas enim juris non aufert seysinam à tenente, propter commodum possidendi, & privilegium possessionis. Igitur nisi sit aliquis qui pbare possit, se ipsum esse primum & principalem feoffatorem, cùm tenens negaverit, cùm p negationem fiat res dubia, tenens remanebit in seysina, quasi deficiente pbatone, licèt revera jus habuerit, cùm defecerit pbatio, licèt jus non deficiat. Si autem dicat inquisitio, quòd omnes feofati sunt uno eodem tempore, petens & tenens, s. à conquestu Angliæ, adhuc erit judicandum p possidente, eò quòd pares sunt jure & tempore, cùm paritas non aufert possessionem, ut suprà. Item si sciri non possit omnino, nec pbari cujus feoffamētum sit vetustius, vel si fortè juratores dubitaverint, adhuc remanebit pos-

f. 90 b

they have a right to it. But it remains to be seen, whether it ought altogether to remain with one, on condition that he satisfies the other to the amount of half its value, or whether it should remain in totality with one without any satisfaction [to the other], since a maritag does not admit of division. It seems that it ought to remain in totality with one, without any recompense of mediety, if it can be proved, who of them was the last in seysine. But if it can not be proved, and the proof altogether fails, it seems that he ought to be preferred, who first instituted an action. For let it be, that one out of several chief lords, who has a right to the maritag, was in seysine, and one or more claim the maritag, he who has seysine shall remain in seysine, until it shall be established which of them has the greater right to the maritag. For it is not sufficient, that the claimants prove that they have right, all or some of them, in order that possession shall be taken away from the tenant, unless there be some one who proves that he has a greater right: for parity of right does not take away seysine from a tenant, because of the advantage of being in possession and the privilege of possession. Therefore unless there be some one, who can prove, that he is the first and the principal feoffor, when the tenant denies it, since the matter is rendered doubtful by the denial, the tenant will remain in seysine, as if the proof failed, although he had in reality the right, since the proof has failed although the right is not wanting. But if the inquest says, that all have been enfeoffed at one and the same time, claimant and tenant, that is, from the conquest of England, it will still have to be adjudged in favour of him in possession, since they are equal in right and in time, and parity does not take away possession as above. Likewise if it cannot be known altogether and it cannot be proved, whose enfeoffment is the most ancient, or if the jurors by chance have doubted, the possession will still remain

f. 90 b.

sessio tenenti, quasi deficiente p̄batione : quia qui dubitat, vel obscure loquitur, non p̄bat ; quia quotienscunq̄ dubitatur an quid sit, perinde est ac si non esset illud, cū autem loquatur p̄batio de uno tempore, adhuc poterit esse prioritas de die vel hora, de quib⁹ si dubitatum fuerit, vel penitus nescitum, adhuc non valet p̄batio petentis. Item cū juratores nihil sciant de prioritate temporis, vel diei, vel horæ, sed dicant quòd petens ultimam habuit seysinam, adhuc non sufficiet hoc, quòd majus tenens possessione privetur ; poterit enim quis esse in seysina, quamvis jus non habuerit, vel jus maj⁹. Cū autem descendat hæreditas tam ex parte patris, quàm ex parte matris, & patre præmortuo, cū hæres non maritetur, reddit mater hæredi hæreditatem, & instituat ut hæredem tenendum de capitalibus dominis, tenebitur hæres statim omnib⁹ capitalib⁹ dominis utriusq̄, hæreditatis ad homagium, quia feoda omnium sunt deliberata, & tunc fiat, sicut prædictū est, de prioritate deliberationis alterius hæreditatis, et de prioritate feoffationis ejusdē hæreditatis & non utriusq̄, antequam & postquam in p̄sona uni⁹ hæredis semel conjuncta fuerit utraq̄, hæreditas, et hæres semel fuerit maritat⁹ ratione primæ paternæ deliberationis. Extunc enim si infra ætatem hæres, et iterum maritand⁹, non observabitur ordo hæreditatis quæ primò deliberata est, sed cōjunctis omnib⁹ feoffatorib⁹ utriusq̄, hæreditatis, iste aliis præferend⁹ erit, qui primus & principalis erit feoffator in cōjunctione utriusq̄, hæreditatis. Item esto, quòd pater vel mater feoffaverit hæredem suum simul & semel, de pluribus feodis, quæ tenentur de diversis capitalibus dominis, tenendæ de seipsis & eorum hæredibus, patre vel matre

to the tenant, as if the proof were defective; because he who doubts or speaks obscurely, does not prove; because as often as it is doubted, whether a thing is, it is the same as if it did not exist, but when the proof speaks of one time, there may still be priority of time, of a day or of an hour, concerning which if there be doubt or there be complete ignorance, the proof of the claimant is still invalid. Likewise when the jurors know nothing of priority of time or of a day or of an hour, but say that the claimant had the last seysine, this will still not be sufficient, in order that the tenant should be deprived of possession: for a person may have been in seysine, although he had no right, or not the greater right. But when an inheritance descends as well from the father's side as from the mother's side, and the father being predeceased, when the heir has not been married, the mother restores to the heir his inheritance, and institutes him as heir to hold of the chief lords, the heir will be bound immediately to do homage to all the chief lords of either inheritance, because the fiefs of all have been delivered, and then it should be done as has been said above concerning the priority of the deliverance of the one or other inheritance, and concerning the priority of the enfeoffment of the same inheritance and not of each, before and after each inheritance has been once united in the person of one heir, and the heir has once been married, by reason of the first paternal delivery. From that time, if the heir be under age and is to be married for the second time, the order of the inheritance, which has been first delivered will not be observed, but, all the feoffors of either inheritance being united, he will have to be preferred to the others, who shall be the first and the principal feoffor in the union of either inheritance. Likewise let it be that a father or a mother has enfeoffed their heir once and together of several fiefs, which are held from different chief lords, to be held of themselves and their heirs, upon the father or mother, the feoffor,

feoffatore præmortuo, hærede non maritato, ptinebit maritagiū ad primum feoffatorem, nec mutatur ordo, nec prioritas: si autem immediatè de capitalib<sup>9</sup> dñis, adhuc illud idem observabitur, dum tamen simul & semel & eodē tempore, quia si aliter esset, sciri nō posset, quis ipsorū esset in maritagio præferendus. Si autem pater vel mater nō simul, sed diversis temporibus, feoffaverunt hæredem de diversis feodis tenendū de se, vel de dñis capitalib<sup>9</sup>, & si de dñis capitalibus, tunc mutatur ordo primæ prioritatis, & tenet novus ordo novi feoffamenti; si autem de se & hæredib<sup>9</sup> suis, adhuc tenet vet<sup>9</sup> ordo & prioritas, quæ non mutatur quantum ad psonas eorum p novum feoffamētum, & ad ipsos ptinebit maritagium quamdiu vixerint; illis tamen præmortuis, hærede non maritato, cūm hæres, ratione successionis antecessorū, & non feoffamēti sibi facti, incipiat esse sub potestate capitalium dominorū, reincipit esse ordo prim<sup>9</sup> prioritatis, qui mutat<sup>9</sup> fuit et alterat<sup>9</sup> p feoffamētū hæredis. Et q dictum est de filio antenato & hærede, locū habet de filio postnato, si post feoffamentū suum cōtingat ipsum esse hæredē. Si autē non, teneat feoffamētū, & maritagium inter ipsum & suū warrantū. Si autē pater vel mater partē hæreditatis dederint filio & hæredi simul & semel, vel successivē, & partē retinuerint, quid juris esse debeat de maritagio habendo, satis elici poterit ex præmissis. Item si pat̄ & mat̄ hæreditatē habentes, simul vel successivē hæredē, feoffaverint vel filiū postnatū de utraq, hæreditate, & aliquid retinuerit, mortuo tā patre q matre, filio infra ætatē existente, & non maritato, erit

f. 91.

being predeceased, the heir not having been married, the maritage will belong to the first feoffor, nor is the order or the priority changed ; but if they are [to be held] immediately of the chief lords, the same thing will still have to be observed, provided it be done together and at one and the same time, because if it were otherwise, it could not be known, which of them was to be preferred as regards the maritage. But if the father or the mother have enfeoffed the heir at different times and not at the same time with different fiefs to be held from themselves, or from the chief lords, if indeed from the chief lords, then the order of the first priority is changed, and the new order of the new enfeoffment holds good ; but if from themselves and their heirs, the ancient order and priority still holds good, which is not changed, as regards their persons, by the new enfeoffment, and the maritage will belong to them as long as they live ; but on their prior decease, the heir not having been married, when the heir, by reason of the succession of his ancestors, and not of the enfeoffment made to him, begins to be under the power of the chief lords, the order of the first priority, which was changed and altered by the enfeoffment of the heir, recommences to be in force. And what is said of a son and heir born beforehand, takes place in regard to a son born afterwards, if it happens after his enfeoffment, that he is the heir. But if not, let him hold the enfeoffment and the maritage between himself and his warrantor. But if the father or the mother have given a part of the inheritance at one and the same time, or successively to their son and heir, and have retained a part, what right there ought to be to have the maritage, may be sufficiently gathered from the premisses. Likewise if the father and the mother having an inheritance, have enfeoffed together or successively, as heir, an after-born son with either inheritance, and have retained something, upon the death of the father as well as of the mother, and the son being under age and not married,

illud q retentū est primū feoffamentū, cūm hæres in man<sup>o</sup> dñi devenerit, licet illud esset ultimū in psonis antecessorū. Item cū filium & hæredem feoffaverint de utraq hæreditate pater & mater, teñdā de eis, & nihil sibi retinuerint, tunc illud feodum erit pferend', q fuit primum p novum feoffamentū, exclusa prioritāte feoffationis antecessorū. Item esto q successivè feoffaverunt filium postnatū, de se tenend' & hæredib<sup>o</sup> suis, maritag' hæredis talis ad eos ptinebit, nec habenda est ratio, quantum ad eos & hæredes suos de prioritāte feoffamēti, cūm unus sit feoffator & unus hæres, nisi ita sit fortè, q ille postnatus hæres pficiatur, quo casu pferetur ille in maritaggio habendo, de cujus feodo talis fuit primò feoffat<sup>o</sup>, & tenebit novitas, exclusa vetustate, aliter enī esset, si de utraq hæreditate simul & ex toto esset feoffatus. Item & eodem modo, si cū hæres patris vel matris feoffatoris sit infra ætatem & in custodia dñi capitalis, cūm parentes feoffatores sibi partem hæreditatis retinuerunt, moriatur filius postnatus, hærede suo infra ætatem existente, & ratione hæreditatis antecessorū qui feoffaverūt, devenerit custodia terrarū hæredis postnati in man<sup>o</sup> dñorū capitaliū, de maritag' ipsius hæredis erit habenda ratio prioritatis, secund' q ipse à patre & matre feoffatus fuit, simul vel vicissim, quia si simul de pluribus feodis, erit ille capitalis dñs in maritaggio præferendus, de cujus feodo antecessores feoffatores primò fuerunt feoffati. Si autem vicissim, tunc erit ille præferendus, de cujus feodo pater & mater primum fecerunt feoffamentū filio postnato.



that which has been retained will be the first enfeoffment, when the heir comes into the hands of the lord, although it was the last in the persons of the ancestors. Likewise when the father and the mother have enfeoffed a son and heir with the inheritance of each, to be held of them, and have retained nothing for themselves, then that fief will have to be preferred, which was the first under the new enfeoffment, to the exclusion of the priority of the enfeoffment of the ancestors. Likewise let it be, that they have successively enfeoffed an after-born son to hold of them and their heirs, the maritage of such an heir will pertain to them, nor is respect to be paid, as far as regards them and their heirs, to any priority of enfeoffment, since there is one feoffor and one heir, unless it should be by chance, that the after-born heir should be set first, in which case he, with whose fief such [heir] was first enfeoffed, is preferred in having the maritage, and the more recent will prevail to the exclusion of the more ancient, for it would be otherwise, if he had been enfeoffed with each inheritance at one and the same time. Likewise and in the same way, if when the heir of the father and of the mother is under age and in the wardship of the chief lord, when the parents, who are the feoffors, have retained for themselves a part of the inheritance, the after-born son dies, his heir being under age, and by reason of the inheritance of the ancestors who have enfeoffed him, the custody of the lands of the after-born heir has come into the hands of the chief lords, regard will have to be had to priority in what concerns the maritage of the heir himself, according as he has been enfeoffed by the father and by the mother, at the same time or in turns, for if he has been enfeoffed at the same time with several fiefs, that chief lord is to be preferred in the maritage, with whose fief his ancestors and feoffors were first enfeoffed. But if in turns, then he will have to be preferred, with whose fief the father and the mother first made an enfeoffment to the after-born son.

6.  
Ad quem  
pertinet  
maritagium  
de sock-  
agio.

De sockagio vidend' est, ad quem ptineat maritag', & sciend' quod ad ipsum, ad q ptinet custodia terraŕ & teñtorum, secund' diversam consuetudinem locoŕ, vel ad dñm capitalem, vel ad ppinquiorē consanguineū qui nihil juris clamare possit in hæreditate, ppter suspitionem exhæredationis, & ipsius consanguinei maximè, ex cujus parte hæreditas nō descendit, vel qui aliquid juris clamare possit in hæreditate, vel qui hæres esse possit toti<sup>9</sup> vel p parte, & ideò non deberet esse filia postnata in custodia primogenitæ, vel mariti sui, si viro fortè nupta fuerit. Et ideò si quis emerit custodiā terraŕ, & maritag' filiaŕ, & aliq illaŕ duxerit in uxorē, statì oritur suspitio, & amittit custodiā corporis & maritag' aliaŕ ipso jure, ppter suspitionē, & ideò ptinebit ad parentes ut dict' est, custodia corporis & maritag'. Esto etiā q quis feoffatus fuerit de aliquo teñdum in sockagio primò, & postea de eodē vel ab alio tenendi p servitium militare, vel è contra, videtur & verè est, q ille pferend<sup>9</sup> est, qui feoffavit per servitiū militare, ppter privileg' militare; & si feoffat<sup>9</sup> dāpnū incurrat p tale feoffaŕit quoad maritag', hoc sibi ipsis poterunt iputare. Si cūm hæredes extiterint sub potestate parentum, ad quos pertinuerit maritagium mero jure, parentes ipsorum maritagium hæredum vendiderint, & ab emptore maritati non fuerint in vita venditoris, statim mortuo venditore, ad dominum capitalem pertinebit maritagium, & ex tunc, si alius eum maritaverit, emptor, parens, extraneus, vel alius ad quem non pertinuerit, & jus non habuerit, vel si jus habue-

Concerning sockage let us see to whom the maritage belongs, and it is to be known that it belongs to him, to whom the custody of the lands and tenements belongs, according to the different custom of the places, either to the chief lord, or to the next kinsman by blood, who can assert no right to the inheritance, on account of the suspicion against him of disherison and against that kinsman chiefly, on whose side the inheritance does (not?) descend, or who can assert some right to the inheritance, or who can be the heir of the whole, or for a part, and on that account an after-born daughter ought not to be in the wardship of the firstborn (daughter), or of her husband, if by chance she is married to a man. And accordingly, if any one has bought the custody of lands and the maritage of daughters, and has taken to himself to wife one of the daughters, suspicion against him immediately arises, and he loses the custody of her person and the maritage of the others by operation of law on account of the suspicion against him, and accordingly the custody of the person and the maritage will belong to the parents as said above. Let it be also that a person has been enfeoffed by some one with a fief to be held in sockage first of all, and afterwards by the same person or by another with the same fief to be held in military service, or the contrary, it seems and it is true, that he is to be preferred who has enfeoffed on condition of military service on account of the military privilege; and if the person enfeoffed incurs loss by such an enfeoffment as regards the maritage, they may impute the blame to themselves. If when the heirs are under the power of their relatives, to whom the maritage belongs of absolute right, the parents sell the maritage of those heirs, and they have not been given away in marriage by the buyer during the life of the seller, immediately upon the death of the seller, the maritage will belong to the chief lord, and thenceforth if another gives away the heir in marriage, a buyer, a relation, a stranger, or another to whom it does not belong, and who has no right, or if

6.  
To whom  
belongs  
the mari-  
tage in the  
case of  
sockage.

f. 91 b. rit, & alius majus jus habet, facit domino capitali præjudicium, ad quem mero jure ptinuerit maritagium, cū illud sit ei deliberatum, cū emptor illam seysinā verā habuerit in vita venditoris, ppter non usum, nec poterit in hoc casu hæredem vocare ad warrantum. Si autem hæredes, cū sint sub potestate parentum, sine consensu eorum se maritaverint, propter hoc non sunt exhæredandi, licet aliter quodammodo puniendi, si parentes voluerint. Si autem, cū hæredes in potestate dominorum devenerint non maritati, ipsi domini capitales vendiderint maritagium cū jus habuerint, licet ali<sup>o</sup> pl<sup>o</sup> juris; & ille qui plus jus habuerit petierit maritagium ab emptore, & custodiam hæredis, in hoc casu erit venditor vocandus ad warrantum. Et q dicitur de uno emptore, dici poterit de plurib<sup>9</sup>, si maritagiū sit venditum pluribus de manu in manum.

7.  
Provisio,  
si quis  
hæredem  
subtraxerit.  
Britton,  
l. iii. ch. iii.  
§ 17.  
Fleta 11.

Provisio de cōmuni consilio facta, de hæredibus infra ætatem existentibus, si, dum fuerint infra ætatem, p malitiam abducti fuerint, & detenti p parentes à custodia dominorum, quòd si laicus inde convictus fuerit, quòd puerum abduxerit & maritaverit absq, licentia domini capitalis, restituat vel reddat custodi valorem maritagii, & corp<sup>9</sup> p delicto tradatur p ballivos prisonæ, quousq, custodi emendaverit delictum, & quousq, domino regi satisfecerit de transgressione illa, & hoc intelligatur de hæredibus infra xiiij.<sup>1</sup> annos existentibus: de hæredibus autem qui sunt quatuordecim annorum & ultra, usq, ad plenam ætatem, & si se maritaverint sine licentia dominorum, ut eis auferant maritagium suum, & dñs capitalis talis hæredis obtulerit ei rationabile maritagiū, ubi non disparagetur, & q recusare non deberet, domin<sup>9</sup> suus tunc teneat ter-

<sup>1</sup> Sic MS. Rawl., C. 160.

he has any right, another has a greater right, he does prejudice to the chief lord, to whom the maritage belongs of absolute right, since it has devolved to him from non-user, although the buyer had true seysine of it during the lifetime of the vendor, nor can he call the heir in this case to warrant. But if heirs, when they are under the power of their relations, get married without their consent, they are not on that account to be disinherited, although they are to be punished in some other way, if the relatives wish. But if, when heirs unmarried have come into the power of their lords, the chief lords themselves have sold the maritage, whilst they had the right, although another had more right, and he, who has the greater right, claims from the purchaser the maritage and the custody of the heir, in this case the vendor will have to be summoned to warrant. And what is said of one purchaser may be said of several, if the maritage has been sold to several from hand to hand. f. 91 b.

A provision has been made by the Common Council [of the realm] concerning heirs being under age, if, whilst they are under age, they have been maliciously abducted and detained by their relations out of the custody of their lords, that if a layman be convicted thereof, that he has carried off a boy and given him away in marriage without the licence of the chief lord, he shall restore or render to the guardian the value of the maritage, and his body shall be delivered by the bailiffs to prison, until he shall have compensated the guardian for his delict, and until he has made satisfaction to the king for that transgression, and this is to be understood of heirs under fourteen years of age: but of heirs, which are of fourteen years of age and upwards up to full age, if they have married themselves without the consent of their lords, that they might deprive him of the maritage, and the chief lord has offered the heir a reasonable marriage, by which he would not be disparaged, and which he ought not to refuse, then let his lord keep his land 7. A provision in case any one has abducted an heir.

ram ejus ultra terminū ætatis suæ, s. xxj. anni, p quantum temp<sup>9</sup> p̄cipere potest duplicem valorem maritagii, secundū æstimationem legalium hominum, vel secundū q ei prius p eodem maritagio oblatum fuerit sine fraude & malitia, vel secundū quod p̄bati possit in curia domini regis. De dominis autem capitalibus custodibus, si illos maritaverint, quos habent in custodia, villanis vel aliis, sicut burgensibus, ubi disparagentur, si talis hæres infra ætatem xiiij. annorum, vel talis ætatis extiterit, quod non possit consentire, tunc si parentes conquerantur, dñs ille amittet custodiam usq, ad ætatem hæredis, & omne commodum q inde p̄ceptum fuerit, convertatur in commodum ipsius qui infra ætatem fuerit, secundū dispositionem & p̄visionem parentum, contra dedecus ei factum. Si autem fuerit xiiij. annorum & ultra, quod consentire possit, & tali maritagio cōsenserit, nulla p̄na subsequatur. Si quis hæres, cujuscunq, ætatis fuerit, p dño suo se maritare noluerit, non cōpellatur hoc facere contra voluntatem suam, sed cū ad ætatem p̄venerit, domino suo satisfaciet de tanto, quantū dñs su<sup>9</sup> p̄cipere posset ab aliquo p maritagio, antequā terram suam recipiat, & sive voluerit se maritare, sive non, p̄dict<sup>9</sup> hæres, quia maritadium ejus, qui fuerit infra ætatem, de mero jure ptinet ad dominum feodi.

## CAP. XXXIX.

f. 92.

1.  
De donationibus  
propter  
nuptias ob  
causam

Quoniam utile est mulieres esse dotatas multis de causis, acquiruntur enim eis cū fuerint maritandæ rerum dñia ex causa donationis, ut cū fuerit fœmina maritanda, fit ei donatio à viro suo multis modis p̄pter

beyond the term of his twenty-first year, for so long a time as will enable him to receive double the value of the maritage, according to the estimate of loyal men, or according to what has been previously offered to him, for the 'same maritage without fraud or malice, or according to what can be proved in the court of the lord the king. But concerning chief lords who are guardians, if they have married those whom they have in wardship, to villains or to others, as to burghers, where they are disparaged, if such heir be under fourteen years of age, or of such age that he cannot consent, then if the parents complain, that lord shall lose the [profits of the] wardship up to the full age of the heir, and every advantage, that can be derived from it, shall be turned to the advantage of him who is under age, according to the disposition and provision of the relatives against the disgrace inflicted upon him. But if he be of fourteen years and upwards, that he may consent and he has consented to such marriage, let no penalty follow. If any heir, of whatever age he may be, should be unwilling to be married for the advantage of his lord, let him not be compelled to do this against his will, but when he has come to full age, he shall make satisfaction to his lord for so much as his lord could have obtained from any one for the marriage, before he shall receive his land, and whether he the aforesaid heir has wished to marry himself or not, because the choice of a wife (maritage) for him who is under age, pertains of absolute right to the lord of the fief.

## CHAPTER XXXIX.

Since it is useful, for many reasons, that women should be endowed, for the dominion over things is acquired by them when they are about to be married, by reason of donation, as when a woman is about to be married, a donation is made to her by her husband in various ways

f. 92.  
1.  
Concern-  
ing dona-  
tions by  
reason of  
nuptials  
for the  
object of

dotis, dotis  
constitu-  
tione, et  
quid est  
dos.  
Glanville,  
vi. l.  
Britton,  
l. v. ch. i.  
§ 1.  
Fleta 340.

nuptias de re ppria viri, vel de re patris, vel matris, fratris, vel sororis, vel alterius amici, de eorum consensu & voluntate, quæ quidem donatio dicitur dos, & quæ quidem perfecta esse non potest ante mortem viri, nec, quamvis in vita viri possit constitui, tamen ante mortem seysina non poterit assignari: inprimis igitur videndum quid sit dos, & quæ sit dos, & quæ sit rationabilis dos, & quis possit dotem constituere, & cui. Item quando, & ubi, & de qua re, et quantum. Item quis possit dotem assignare, et quando, et infra quod tempus, et ubi assignetur, quæ competat actio mulieri ad dotem suam consequendam. Et sciendum, quòd dos est id, quod liber homo dat sponsæ suæ ad ostium ecclesiæ, ppter nuptias futuras, et onus matrimonii, et ad sustentationem uxoris, et educationem liberorum, cùm fuerint pcreati, si vir præmoriatur.

2.  
Quæ est  
rationabilis  
dos.  
Britton,  
ib. § 4.  
Fleta, 341.

Rationabilis autē dos est cujuslibet mulieris de quocunq; tenemento tertia pars omnium terrarum & tenementorū, quæ vir suus tenuit in dominico suo, et ita in feodo, quòd eam inde dotare poterit, die quo eam desponsavit.

3.  
Quis pos-  
sit dotem  
constituere.

Item quis possit dotem constituere, et sciendum quòd tam minor, quàm major masculus. Cui uxori? tam majori, quàm minori. Poterit enim ille qui infra ætatē est, uxorem suam dotare, quamvis existentem infra ætatem, dum tamen possit dotem pmereri, et virum sustinere, et quamvis vir infra ætatem moriatur, uxor sua, sive infra ætatem fuerit sive non, dotem obtinebit. De hac autē materia, inveniri poterit de



on account of the nuptials from the property of the husband, or [a donation is made to her] from the property of the father, or of the mother, of the brother or of the sister, or of some other friend, with their consent and good will, which donation indeed is called dower (dos) and which cannot be completed before the death of the husband, nor, although it may be appointed in the lifetime of the husband, can seysine of it be assigned before his death; we must see in the first place what thing is dower, and what is dower and what is reasonable dower, and who may appoint dower and to whom? Likewise when, and where, and of what thing, and how much. Likewise, who can assign dower, and when, and within what time, and when it is assigned, to what action a woman is entitled to obtain her dower. And it is to be known that dower is what a free man gives to his spouse at the door of the church in consideration of the future nuptials, and the burden of matrimony, and for the sustentation of the wife and the education of the children when they are born, if the husband should die first.

But the reasonable dower of any woman whatsoever, in respect of any tenement whatsoever, is the third part of all the lands and tenements, which her husband has had in his domain, and so in fee, that he could endow her therewith on the day on which he espoused her.

Likewise who can appoint dower? And it is to be known that a minor, as well as a major of the male sex [may do so]. To what wife? To a major, as well as to a minor. For he who is under age may endow a wife, although she is under age, provided however she can earn her dower and support her husband, and although the husband dies under age, his wife, whether she be under age or not, shall obtain her dower. But on this subject a judgment may be found in Easter

termino Paschæ anno regni regis H. nono in comitatu Devoni, de Sara, quæ fuit uxor Wilhelmi Burnell.

4.  
Item  
quando et  
ubi.  
Britton,  
ib. § 2.  
Fleta 340.

Quando? et sciendū, quodd ante desponsationem, in initio contractus. Ubi? et sciendum quodd in facie ecclesiæ, & ad ostium ecclesiæ, non enim valet constitutio facta in lecto mortali, vel in camera, vel alibi, ubi clandestina fuerint conjugia, quia si non valeant clandestina conjugia hæredib<sup>9</sup> quoad successionem, nunquam valebunt uxoribus ad dotis exactionem. Oportet igitur q constitutio dotis sit facta publicè, & cum solemnitate ad ostiū ecclesiæ, & ubi nullū omnino matrimonium, ibi nulla dos. Igitur videtur à contrario sensu, ubi matrimonium, ibi dos, q quidem verum est, si matrimoniū in facie ecclesiæ contrahat. Ad ostiū ecclesiæ fiat dotis constitutio inter quascunq psonas consanguinitate vel affinitate conjunctas, vel extraneas, dum tamen matrimoniū in vita cōtrahentium accusatum non fuerit, nec dissolutum. Si tamen accusatū & dissolutū quacunq ratione, desinit esse dos, cūm deficiat matrimonium, & desinit esse dotis exactio. Nec debet aliquis ratione uni<sup>9</sup> viri, in dotis petitione, duab<sup>9</sup> uxorib<sup>9</sup> respōdere.

5.  
Quot sint  
species  
dotis.

Et dotis species sunt duæ, alia pfectitia, alia adventitia, pfectitia dici poterit quæ datur à patre, vel matre, vel alio parente in ipso contractu p filia maritanda, & terra sic data dici poterit maritagiū, et matrimoniū mulieris, et aliquādo cadit in partem inī cohæredes fœminas, si talis partē habere voluerit hæredit'

term in the ninth year of King Henry, in the county of Devon, concerning Sarah, who was the wife of William Burnell.

When? And it is to be known, that it is before the espousal, at the commencement of the contract. Where? <sup>4. Likewise when and where dower should be appointed.</sup> And it is to be known, that it is in the face of the church and at the door of the church, for an appointment is not valid, which is made in the bed of death, or in a chamber, or elsewhere, where clandestine unions are made, because if clandestine unions are not valid for the heirs as regards succession, they are not valid for the wives as regards their exaction of the dower. It is incumbent, therefore, that the appointment of dower should be made publicly and with solemnity at the door of the church; and where there is no matrimony at all, there is no dower. It seems therefore, in the contrary sense, where there is matrimony, there is dower, which is true indeed, if matrimony is contracted in the face of the Church. The appointment of dower may be made at the door of the church between any persons whatsoever united by consanguinity or by affinity, or between strangers, provided however the marriage is not impeached nor dissolved in the lifetime of the contracting parties. But if it be impeached and dissolved in any manner, there ceases to be dower, when matrimony fails, and there ceases to be the right to exact dower. Nor ought any one in regard to one husband in a petition of dower make answer to two wives.

And there are two kinds of dower, the one profectitious, the other adventitious. Dower may be said to be profectitious, when it is given by a father or a mother, or another relative, in the contract itself for the marriage of a daughter, and the land so given may be a marriage and the patrimony of the woman, and it sometimes comes into partition between female coheirs, if such an one wishes to have a part of the inheritance, as above <sup>5. What are the specific kinds of dower.</sup>

f. 92 b. ut suprâ. Et non<sup>1</sup> dicitur pura donatio facta sine causa matrimonii. Itē advētitia dos dici poterit maritagium, quod ab aliis datur, quā à patre vel matre, sive parens sit vel extraneus. Item est dos párapherna<sup>2</sup> quæ fit juxta dotem, vel præter & ante matrimonium, non constante matrimonio, ut si fiat viro & uxori simul, vel uxori p se; & talis non cadit in partē, licet facta fuerit à parentibus, quia pura est, & non ob causam matrimonii ut suprâ dictū est. Item fit donatio ppter nuptias, q sponsus dat sponsæ ad ostium ecclesiæ, & de qua hñc agitur, die desponsationis. Et hoc ppriè dicitur dos mulieris secundū consuetudinem Anglicanā, & talem dotem lucratur vir, uxore præmortua, & uxori remanet ad vitam viro præmortuo, & lucratur sic vir dotem, uxore præmortua. Item lucratur vir aliquando dotem ex lege in vita mulieris, cū celebratum fuit inter eos divortium, quacunq, ratione, sed non si fiat tantū separatio thori. Item aliquando dotem lucratur<sup>3</sup> post mortem viri, cū fuerit assignata ex cōsuetudine civitatū & cōm, sicut in Kanc. & Londoñ, Lincolñ & alibi. Et sciendum, quòd maritagium ob causam matrimonii, semper remanet mulieri & hæredib<sup>9</sup> suis, si hæredes habuerit, si autem non, revertitur p defectu hæredis, & eodem modo dos paraphernalis<sup>4</sup> hæredibus quibuscunq.

6.  
Item de  
quare.

De qua re? & sciendum, quòd si vir terras habuerit & teneñta, dotare poterit uxorem suam, dum tamen modum non excedat, de quacunq, terra voluerit, & de cujuscunq, feodo extiterit, quamvis p hoc auferat dño

<sup>1</sup> Sic MS. Rawl. C. 160.

<sup>2</sup> "Parapherna," MS. Rawl.

<sup>3</sup> "Item hæres quandoque dotem lucratur," MS. Rawl.

<sup>4</sup> "Paraphernalis," MS. Rawl.

said. And an absolute donation made without any reason of matrimony is not called [dower]. Likewise dower may be called adventitious, when it is a maritage given by others than the father or the mother, whether it be a relative or a stranger. Likewise there is paraphernal dower, which is made by the side of dower, or beyond or before matrimony, matrimony not being a thing settled, as if it be made for the husband and the wife together, or for the wife by herself: and such dower does not come into partition, although it may have been made by relations, because it is absolute, and not on account of matrimony, as above said. There is likewise a donation on account of nuptials, which the spouse gives to the spouse at the door of the church, and which is treated of here, on the day of espousal. And this is properly called the dower of the woman according to the custom of England, and such dower the husband gains if the wife predeceases him, and it remains to the wife for life, if the husband predeceases her, and the husband thus gains the dower if the wife predeceases him. Likewise the man sometimes gains the dower by law during the lifetime of the woman, when a divorce is celebrated between them, for whatever reason, but not if there be only a separation of bed. Likewise she sometimes gains the dower after the death of the husband, when it has been assigned to her according to the custom of cities or of counties, as in Kent and in London, in Lincoln and elsewhere. And it is to be known that the maritage in consideration of matrimony always remains to the woman and her heirs, if she have heirs, but if not, it reverts from failure of heirs, and in the same way the paraphernal dower [remains] to heirs of any kind whatsoever.

Of what things? And it is to be known, that if a man has lands and tenements, he may endow his wife, provided he does not exceed moderation, with whatever land he pleases, and with whosever fief he possesses, although he thereby takes away from the chief lord the

f. 92 b.

6.  
Likewise  
of what  
things  
dower is  
made.

capitali custodiam feodi sui, cū uxor dotem obtinuerit, damnum quidem ei facit, sed nullā injuriam, cū, si custodiam non habuerit, sufficiat ei releuiū, & de hac materia inveniri poterit de termino P. anno regis H. duodocimo cōm Lincolñ, de Idonea, quæ fuit uxor Nicholai Burdeth. Item de terris & teneñtis ppriis, quæ tenuerit in feodo sibi & hæredibus suis, & non ad terminum vitæ vel annorum, sive illa tenuerit vir ex causa successionis sive ex causa pquisiti, vel alio quocunq, modo, & unde si feoffatus fuerit purè & sine aliqua conditione sibi & hæredib<sup>9</sup> suis certis & expressis, vel indeterminatis, quāvis tales hæredes non habuerit, sive bastardus fuerit, sive legitimus, vel si tales hæredes habuerit & defecerint, ita quòd terra data reverti debeat ad donatorem p conditionem tacitam vel expressam: uxor dotem obtinebit, quia pura est donatio ab initio, & purum feoffamentum, quamvis p conditionem tacitam vel expressam dissolutum. Si autem ita facta esset donatio, ut si dicam, do tibi tantam terram, nulla facta mentione de hæredibus, ista donatio se nō extendit ad hæredes, nisi tantūm ad vitam donatorii, & quia non in feodo nisi ad vitam, ideò cessat dotis petitio. Si autem adjiciat in donatione ita, Do tibi & hæredibus tuis, si hæredes habueris tales, vel de tali uxori, ista donatio non est perfecta ab initio, sed dependet ex insidiis fortunæ, nec erit perfecta antequam existat conditio, quòd hæredes habueris tales vel ex tali uxore, q̄ si defecerit, non erit ibi feod', sed tantūm liberum tenementum ad vitam, & ita cessabit dotis petitio. Si autem tales hæredes habuerit, vel de tali uxore, qvis defecerint, statim incipit donatio esse perfecta, & feod', & competit uxori petitio dotis. In primo autem casu est donatio pura,

custody of his fief, when his wife obtains her dower; he does him harm, but no injury, since if he has not the custody, a relief will suffice to him; and on this subject a case will be found in Easter Term in the twelfth year of King Henry, in the county of Lincoln, concerning Ido-nea, who was the wife of Nicolas Burdeth. Likewise [he may endow her] with lands and tenements of his own, which he holds in fee to himself and his heirs, and not for the term of his life or for a term of years, whether the man holds them by right of succession, or by right of acquisition, or in any other manner, and hence if he has been enfeoffed, absolutely and without any condition for himself and his heirs, either certain and expressed, or indefinite, although he may not have had such heirs, whether he be a bastard or legitimate, or if he has had such heirs and they have failed, so that the land ought to revert to the donor in virtue of a condition tacit or expressed: the wife shall obtain her dower, because it is an absolute donation from the commencement, and a pure enfeoffment, although under a condition tacit or expressed. But if the donation has been so made, as if I should say, I give you so much land, no mention being made of heirs, that donation does not extend itself to heirs, except for the life of the donatory, and because it is not in fee except for life, therefore the claim of dower ceases. But if he add in the donation thus, I give to you and to your heirs, if you should have such heirs, or from such a wife, that donation is not complete from the commencement, but it depends upon the snares of fortune, nor will it be complete until the condition is fulfilled, that you have such heirs or [heirs] from such wife, failing which, there will be no fief there, but only a free tenement for life, and so the claim of dower will cease. But if you should have such heirs or [heirs] from such wife, although they may fail, the donation forthwith becomes complete and the fief, and the wife is entitled to a claim of dower. But in the first case it is a pure

f. 93.  
 Britton,  
 l. v. ch. i.  
 § 4.  
 Fleta 341.

sed resolvitur sub conditione tacita vel expressa. In secundo verò casu non est pura, sed dependens quousq; extiterit conditio, vel deficiat. Item constitui potest dos rationabiliter, secund' q prædictum est, & idè ultra tertiam partem, quia in majori quantitate, q in tertia parte, constitui non potest, potest tamen in minori, dum tamen uxor in constitutione se teneat contentam. Si tamen ulteriùs q rationabiliter constitutatur, cùm fuerit assignata, id q excedit per admeasurementem revocabitur, si capitalis dñs, vel alius ab hærede dotem assignaverit. Secus autem esset, si hæres hoc fecerit sciens & prudens. Et hæc quæ dicta sunt de tertia parte, vera sunt de feodo militari, nisi aliter observetur de aliqua consuetudine speciali, vel nisi terra teneatur in sockagio, ubi diversimodè fit dotis constitutio, vel in gavelkind, vel si sockagium adjungatur feodo militari. Et de hac materia habetis de terñ P. anno reg. Re. H. decimo quinto in cõ Cantabrigiæ. Item constitui potest dos, non tant in terris & tenementis perquisitis, sed etiam pquirendis, si perquisita fuerint, vel acciderint in vita viri sui, ut de terñ P. anno reg. Re. He. septimo in cõ Somerset, de Emma, q fuit uxor Wilhelmi Daci, & licèt vir suus jus habuerit in terris pquirendis, cessat dotis exactio sive petitio, nisi in vita viri fuerint pquisita, qvis post mortem viri acciderint vel fuerint pquisita, quia de eo, de quo vir nunquã seysinam habuit, non potest dos peti: nisi ita esset, quòd dos constitueretur in aliquo teneñto, q post mortem tenentis esset ad viñ reversurum, quòd si dos ita constituta fuerit, sive re-



donation, but it is resolved under a tacit or expressed condition. In the second case it is not a pure donation, but dependent, until the condition is fulfilled or fails. Likewise dower may be appointed reasonably, according to what has been said above, and therefore beyond the third part, because it cannot be appointed in greater quantity than for the third part, but it may be appointed in less quantity, provided however the woman keeps herself content. But if it be appointed to an extent greater than is reasonable, when it has been assigned, that which exceeds by measurement shall be revoked, if the chief lord or another than the heir shall have assigned a dower. But it would be otherwise, if the heir should have done this knowingly and intentionally. And what has been said concerning the third part, is true of a military fief, unless it be otherwise observed by some special custom, or unless the land be held in sockage, where the appointment of dower is made in another way, or in gavel kind, or if sockage is united to a military fief. And on this subject you have a case in Easter term in the fifteenth year of King Henry in the county of Cambridge. Likewise dower may be appointed, not only in lands and tenements which have been acquired, but also in lands and tenements to be acquired, if they have been acquired, or have fallen in during the life of her husband, as in Easter term in the seventh year of King Henry in the county of Somerset, concerning Emma who was the wife of William Dace, and although her husband had a right to lands to be acquired, the exaction and the claim of dower ceases, unless they have been acquired during the lifetime of the man, although they may have fallen in or have been acquired after the death of the man, because dower cannot be claimed of that, of which the man never had seysine; unless it were that dower was appointed in a certain tenement, which after the death of the tenant was about to revert to the man, but if dower has been so appointed, whether it revert

f. 93.

vertatur in vita viri, sive post mortem, erit locus petitioni dotis, ut videri poterit, si constituatur dos in tenemento, quod alia uxor tenuit in dotem, si in vita uxoris dotatae acciderit (qvis non in vita viri) recuperabit eam uxor ut dotem suam, si inde sectam habuerit sufficientem propter constitutionem dotis specificatam, q quidem aliter esset, nisi esset specificata. Et de hac materia habetis de term̃ Sanct. Hil. anno reg. H. decimo quarto in com̃ Northampton de Christiana quæ fuit uxor Walteri, quæ recuperavit, quamvis vir suus inde seysinam non haberet, dum vixit. Et cūm uxor sic dotata fuerit de re, quam alius tenet, & quæ post mortem tenentis reverti debeat ad heredem warrentum de dote sua, videndum si expectare debeat mortem tenentis, antequam dotem habeat, vel si ei debeat assignari ad valentiam in tenantia, quousque dos sic nominata ei fuerit deliberata. Et videtur quòd expectare debet, nisi aliter specialiter convenit ab initio constitutionis. Item ab initio constitui poterit dos in re certa & nominata, & re incerta & non nominata. In re certa & nominata, sicut de aliquo manerio certo, de cujuscunque feodo extiterit, cūm vir plura tenementa teneat de diversis feodis, & diversis dominis capitalibus, quia secundūm quod prædictum est, in electione viri erit, de cujus feodo velit uxorem suam nominatim dotare, dum tamen manerium illud non sit caput baroniæ, si plura alia habuerit maneria quæ non sint capita baroniæ, quia manerium, quod est caput baroniæ, integrè remanebit hæredi & warrento de dote sua, cūm inde dotari non debeat, si de aliis terris consequi possit dotē suā, & de hac

Britton,  
l. v. ch. i.  
§ 6.  
Fleta 342.

during the lifetime of the man or after his death, there will be place for a petition of dower, so that it may be seen, that if dower be appointed in a tenement, which another wife held as dower, if it should fall in during the lifetime of the wife (although not in the lifetime of the husband) the wife shall recover it as her dower, if she have a sufficient sect in support of the specified appointment of dower, which would be otherwise, unless it were specified. And on this subject you have a case in St. Hilary term in the fourteenth year of King Henry, in the county of Northampton, concerning Christiana, who was the wife of Walter, who recovered, although her husband had not seysine thereof when he was alive. And when the wife has been endowed with an estate which another holds, and which ought after the death of the tenant to revert to the heir the warrantor of her dower, we must see whether she ought to wait for the death of the tenant, before she have her dower, or if there ought to be assigned to her up to its value in the tenancy, until the dower so named has been delivered to her. And it appears that she ought to wait, unless it has been otherwise agreed upon from the commencement of the appointment. Likewise the dower may be appointed from the commencement in a certain named estate, and in an uncertain estate not named. In a certain named estate, as in a certain manor, to whosever fief it belongs, when a man holds several tenements of different fiefs and from different chief lords, because, according to what has been said above, it will be in the election of the man, from which fief by name he wishes to endow his wife, provided that manor is not the capital manor of the barony, if he have several other manors, which are not the capital manors of the barony, because the manor which is the capital manor of a barony, should remain in its entirety for the heir and the warrantor of her dower, since she ought not to be endowed therefrom if she can obtain her dower from other lands; and on

f. 93 b. materia inveniri potest de termino Sanctæ Trin. anno regis H. quarto in cōm Northampton de Theobaldo de Lassel. Et si plura maneria sint, & in hæreditate, quæ sunt de capite baroniæ, tunc q de uno manerio tali dict' est, fiat de plurib<sup>9</sup>, dū tamen uxor alibi dotē cōsequi posset, q si non posset, oportet de neçessitate, q aliter fiat, cū neçessitas sub lege non cōtineatur, quia q aliàs non est licit, neçessitas licit facit. Sed q dicitur de baronia, non est observand in vavassoria, vel aliis minoribus feodis q baronia, quia caput non habent, sicut baronia. Et q dicitur de baronia, & barone, servari debet in cōm & comite, sive castrum ibi fuerit sive non. Cū autem possit uxor dotem nominatā alibi cōsequi q de manerio, q est caput baroniæ, & ei petenti dotem de tali manerio respondeatur q dotem inde habere non debeat p̄dicta ratione, & ipsa è contra dicat, q aliquis antecessor hæredis dotavit uxorem suam de tali manerio, replicari potest ex parte hæredis, quòd hoc non fuit de jure, immò de ignorantia hæredis, vel gratuita permissione, q quidem imposter trahi nō debet in exempli. Si autē oīa maneria sint capita baroniæ, & teneantur in capite de dño rege, nec sit alia terra quæ sufficiat ad dotem, dotari poterit ex tali manerio, salvo tamen hæredi castro, si ibi fuerit, vel capitali mesuag', si non castrum. Sed quoniam quandoque onerosa est custodia castri, vel capitalis mesuagii sine tenente hæredi, cū uxor dotata sit de tali manerio sine exceptione, dissimulatur quandoque uxori seysina castri, propter onus, dum tamen restituatur regi tem-

this subject a case may be found in Holy Trinity term in the fourth year of King Henry, in the county of Northampton, concerning Theobald de Lassel. And if there should be several manors, and those inheritable which are the head of the barony, then what has been said of one such manor, will apply to several, provided, however, that the wife can elsewhere obtain her dower, which if she cannot do, it is incumbent from necessity that it should be otherwise, since necessity is not restrained by law, because necessity makes that allowable which otherwise is not allowable. But what is said of a barony, is not to be observed in a vavassory or in other minor fiefs beneath a barony, because they have no chief place, as a barony. And what is said of a barony and of a baron, ought to be observed in the case of an earldom or an earl, whether there be a castle there or not. But when a wife can obtain her specified dower elsewhere than in the manor which is the head of the barony, and to her petition of dower from such manor it should be answered, that she ought not to have her dower from it for the reason above said, and she on the other says, that some ancestor of the heir endowed his wife from the said manor, it may be replied on behalf of the heir, that this was not done of right, but from the ignorance of the heir, or with his gratuitous permission, which cannot be drawn into a precedent for the future. But if all the manors are heads of baronies, and are held in chief from the king, and there is no other land, which suffices for dower, she may be endowed from such a manor, reserving to the heir his castle, if there be one, or his capital messuage, if there be no castle. But since the custody of a castle is sometimes burdensome, or of a capital mesuage without the tenant heir, when the wife has her dower from such manor without exception, the wife's seysine of the castle is sometimes dissembled on account of the burden, provided it is restored to the king in time of war or other necessity, if he wishes, and

f. 93 b.

pore guerræ, vel alterius necessitatis, si voluerit, & cùm voluerit, secundum quod factum fuit de comitissa Lincoln, quæ fuit uxor Walteri comitis marescalli, de quodam castro in Hibernia, ubi comitissa dotata fuit de toto manerio sine aliqua exceptione, quod fuit caput baroniæ. Poterit etiam uxor dotari nominatim sub conditione vel sine, ut si dicat vir uxori, quod dotat eam de tali manerio cum pertinentiis, quo casu, si sufficiat ad dotem pro tertia parte totius hæreditatis viri sui, tenere se debet contentam, & omnes pertinentiæ ad ipsam pertinent, in advocationibus, & collationibus ecclesiarum, in custodiis, releviis, & maritagiiis, & omnibus aliis rebus, cùm nihil inde excipiat specialiter. Excipitur quandoque multipliciter, secundum quod inferius dicitur. Si autem ibi minus fuerit, quam quod sufficere possit ad dotem, & in constitutione dotis se tenuerit contentam, plus petere non poterit in assignatione. Si autem plus, superfluum tollitur per admeasurementem, & uterque modus duci poterit in conditionem, ut si quis ita dotaverit uxorem suam, de aliquo manerio integrè & sic dicat, & si illud sufficiat pro dote, sic ei remaneat integrè & sine contentione. Si autem minus ibi fuerit, id, quod defuerit, perficiatur ei in alio certo & competenti loco. Si autem plus ibi fuerit, facta extentione & rationabili appreciatione, quod illud superfluum restituatur hæredi. Et revera qualiscunque fuerit dotis constitutio facta, semper erit modus constitutionis observandus, & sequendus, dum tamen legitima sit dotis constitutio, & non contra legem terræ. Et cùm uxor sic dotata fuerit nominatim de quacunque certa re, in ipsa constitutione dotis statim incipit habere jus in re nominata, ita quod si vir eam con-

when he wishes, according to what was done in the case of the countess of Lincoln, who was the wife of Walter Earl Marshall, concerning a certain castrum in Ireland, where the countess was endowed with the whole manor without exception, which was the capital of barony. A wife may also be endowed by name, subject to a condition or not, as if the husband shall say to his wife, that he endows her with such a manor and its appurtenances, in which case, if it is sufficient for a dowry of a third part of the whole inheritance of her husband, she ought to keep herself content, and all the appurtenances belong to her in advowsons and in collations to churches, in wardships, reliefs, and maritages, and in all other things, since nothing is specially excepted. But manifold exceptions are sometimes made, as will be explained below. But if there be less there than will suffice for dower, and she has kept herself content at the appointment of the dower, she cannot claim more at the assignment of it. But if more, the superfluous quantity is removed by mensuration, and each mode may be brought under a condition, as if a person shall have so endowed his wife of some manor in its entirety, and says so, and if it is sufficient for dower, it so remains to her in its entirety and without contention. But if there be less there, the deficit may be made good to her in another certain and suitable place. But if there be more there, a valuation having been made and a reasonable appraisement, what is superfluous should be restored to the heir. And in truth whatever appointment of dower there may have been made, a mean is always to be observed and followed, provided the appointment of dower be legitimate, and not against the law of the land. And when the wife shall have been so endowed in terms of any certain thing whatsoever, on the actual appointment of dower she forthwith begins to have a right in the estate named, so that if the husband should transfer it to another from

f. 94.

stante matrimonio ex quacunque causa ad aliū translulerit, uxor post mortē viri, habebit versus quemcunq, tenentē repetitionem, & cū per occasionem de dote petierit, & teñs hæredē vocaverit ad warrant, & ipse warrantizaverit, uxor recuperabit ipsam rem, & teñs de warrento suo excābiū ad valentiā, q quidē esse non debuit si dotata fuerit de re incerta, sicut de tertia parte reī acquirendaī, vel acquisitaī. Sed è contrario, sc. si res fuerit à viro alienata constante matrimonio, & ipsa petat tertiā partē versus tenentem, cū hæres warrantizaverit, tenens retinebit id q tenet, & uxor recuperabit ad valentiam de hærede, si hæres habeat unde, si autem non, ipsa recuperabit quod petit, & tenens de excābio expectet tempora meliora versus hæredē, donec ad ipsum aliquid pervenerit de hæreditate, & si ad ipsū aliquid pvenerit, tunc habeat uxor de hæreditate excambium, & tenens rehabeat teneñtum suum, si autem nihil de hæreditate in vita uxoris pvenerit ad hæredem, tunc remaneat ei terra illa ad vitam suam nomine dotis, cū esse non debeat indotata, ad teñtem tamen statī post mortem suā reversura. Non nominata verò dici poterit dos & incerta, ubi quis uxorem suā dotaverit in generali de omnibus terris & teneñtis in tertia parte acquisitis, & acquirendis. Item sicut poterit quis uxorem suā dotare in certis terris nominatis, ita eā poterit dotare in certa sumā pecuniæ, sive terras habuerit & teneñta, sive non, ut si burgensis fuerit: maximè si tenuras habuerit exteriores sive non, sive alius tenens exterior, & quo casu, cū uxor contentā semel se tenuerit de sumā illa p dote sua, nihil ampliùs petere potest nomine dotis de aliis

Britton,  
l. v. ch. ii.  
§ 1.  
Fleta 342.



whatever cause during marriage, the wife will have a claim of restitution against the tenant whomsoever, and when on some occasion she has made a claim for her dower, and the tenant summons the heir to warrant, and the heir shall have warranted, the wife shall recover the estate itself, and the tenant shall recover from his warrantor an equivalent by way of compensation, which ought not to be the case, if she had been endowed with an uncertain thing, as with a third part of things to be acquired or already acquired. But on the contrary, for instance, if the estate has been alienated during the marriage, and the wife claims a third part against the tenant, when the heir has warranted, the tenant shall retain what he holds, and the wife shall recover the value of it from the heir, if the heir has wherewithal, but if not, she herself shall recover what she claims, and the tenant must expect compensation from the heir in better times, until some part of the inheritance devolves to him, and if some part shall have devolved to him, then the wife shall have compensation from the inheritance, and the tenant shall resume his tenement; but if no part of the inheritance has devolved to the heir during the life of the wife, then let that land remain to her for her life in the name of dower, since she ought not to remain without dower, with the reversion to the tenant immediately after her death. But dower may be called not named and uncertain, when a person has endowed his wife in general terms with the third part of all his lands and tenements acquired, or to be acquired. Likewise as a person may endow his wife with certain lands by name, so he may endow her with an uncertain sum of money, whether he has lands and tenements or not, as if he be a burgher: chiefly if he has external tenures or not, or there is another external tenant, and in which case, when the wife has once been content with that sum for her dower, she can claim nothing more in the name of dower from the other chat-

f. 94.

Britton,  
ib. § 2.  
Fleta 342.

cattallis, & teneñtis, q fuerit ei constitut, & unde si nomine dotis aliquid petat de catallis, audiri non debet, quia ea ratione q consequi debet plenariè dotem suā, q diu ibi fuerit unicus obolus, vel quaten<sup>o</sup> catalla viri sufficiant, ea ratione si plus ibi fuerit, nihil ulteriùs ibi consequetur, & sicut vult esse in lucro quaten<sup>o</sup> catalla sufficiant, ita esse debet in dāpno in catallis q excedūt, ex alia tamen causa, q ex causa dotis, sicut ex causa testamētaria vel ex consuetudine approbata, ulteri<sup>o</sup> petere potest, si fortè vir aliquid ei reliquerit in testamēto ultra dotem nominatā, vel non nominatā, certā vel incertam. Item & sicut potest dos constitui in pecunia numerata, ita poterit in rebus q consistunt in pondere & mensura, & tam in liquido q in solido, & sicut in isto vel in illo, ita & in utroq. Itē constitui poterit dos ab uno viro, tā plurib<sup>o</sup> uxorib<sup>o</sup> q uni, in vita oñium vel successivè cū decesserint, vel ex quacunq causa, celebrato divortio, in eodē reg. vel eadem pvincia, vel diversis, sed una illar aliis præferetur in dotis petitione, pbato in foro ecclesiastico q illar sit uxor legitima, vel si difficilis sit pbatio, vel deficiat oñino, tunc erit illa pferenda, q in possessione viri extiterit tēpore mortis viri. Si autē, cū quis uxore habuerit & legitimā, aliam superinduxerit illegittimam, vel plures, legitima præferetur. Si autē nulla ex pluribus in possessione extiterit, neque quæ illar legitima extiterit constare possit, tunc nulla illarū obtinebit, pro defectu probationis. Item si uxor una pluribus nupserit in vita omnium, cū decesserit ab omnibus, dotem non obtinebit, cū omnium uxor le-

tels and tenements, than what has been appointed to her, and hence if she should claim any portion of the chattels in the name of dower, she ought not to be heard, because for the same reason that she ought to obtain fully her dower, as long as there is a single farthing, or as long as the chattels of her husband suffice, for the same reason, if there be more there, she shall obtain nothing further, and as she is willing to have the advantage as long as the chattels suffice, so she ought to bear the disadvantage as regards the chattels in excess; for another reason, however, than by reason of dower, as by reason of a testament or an approved custom, she may claim further, if by chance the husband has left to her in his will something beyond the dower named or not named, certain or uncertain. Likewise as the dower may be appointed in money counted, so it may be appointed in things by weight or by measure, and as well in liquids as in solids, and as in one or the other, so in both of them. Likewise dower may be appointed by one man to more wives than one, in the life of all, or successively when they have departed, or when a divorce has been celebrated, for whatever cause, in the same kingdom or in the same province, or in different, but one of them shall be preferred to the others in a claim for dower, upon proof in the ecclesiastical court which of them is the legitimate wife, or if the proof is difficult, or it fails altogether, then she is to be preferred who was in the possession of the husband at the time of his death. But if when a man has one legitimate wife, he has introduced into his house another illegitimate one or several, the legitimate shall be preferred. But if none out of several has been in the possession [of the man at the time of his death], nor can it be ascertained which of them is a legitimate wife, then none of them shall obtain [dower] from failure of proof. Likewise if a woman has married several [men] in the lifetime of all, when she has left them all, she shall not obtain dower, since she

f. 94 b.  
 Britton,  
*ib.* § 3.  
 Fleta 342.

gittima esse nō possit simul & semel, sed unius, licet successivè secundū q̄ inferiūs dicetur in actione de dote. Si quis sub spe pquirendō uxorem suā dotaverit, de omnibus rebus, terris, & tenementis quæ tenuerit die desponsationis, non valet talis dotis constitutio, cū certa esse debeat, & sic constituta incerta fit, cū dependeat ex insidiis fortunæ, & bene esse poterit q̄ nunq̄ faciet pquisitum, & cū pquisitū non fecerit nec uxor esse debeat indotata, restringitur talis dotis constitutio ad legitimā cōstitutionem tertiæ partis, vel dimidiæ secund' diversā cōsuetudinem locorū, & diversitatem teñtorū. Cōstitui etiam poterit dos in terris & teñtis, q̄ quis tenuerit in feodo sibi & hæredibus suis, & non in hiis q̄ teñtur ad terminum vitæ, vel annorum, nec si ita tenuerit quamvis in feodo, q̄ alius jus habeat ut rem evincere possit, q̄ quidem, si p̄ iudicium evicta fuerit, licet uxor inde dotata sit, petitio dotis cessabit, quia p̄ iudicium constabit manifestè, quòd vir suus non fuit seysit<sup>9</sup> inde in dominico, qvis ut de feodo, non tamen ita in feodo, quòd inde dotare possit uxorem, & sic non poterit quis de jure alieno dotare uxorem suā cum effectu ppter evictionem. Sed cū vir uxore suā dotaverit de re certa, & alius eandem rem petierit, & vir ante iudicium illā ei p̄ concordia recognoverit & reddiderit, nihilominus post mortē viri sui integra erit exactio dotis, si uxor dotem petierit, secundū quosdā qui ducti sunt hac ratione, q̄ vir potest aded benè remittere jus pprium sicut alienum, & in hoc dubio dotem obtinebit, in quacunq̄ recognitione &

could not be the legitimate wife of all at one and the same time, but of one only, although successively, according to what will be said below on the action for dower. If any one in the hope of making acquisitions has endowed his wife with all the estates, lands, and tenements, which he held on the day of his espousals, such an appointment of dower is not valid, since it ought to be certain, and so appointed it is uncertain, since it depends upon the snares of fortune, and it may well happen that he will never make an acquisition, and when he has not made an acquisition, and the wife ought not to remain without dower, such an appointment of dower is restricted to the legitimate appointment of the third part or of the half according to the divers customs of localities, and the diversity of tenements. But dower may be appointed 'in lands and tenements which a person holds in fee to himself and his heirs, and not in those which a person holds for the term of his life, or for a term of years, nor if he should hold them, although in fee, so that another may evict the estate, because indeed if it be evicted by a judgment, although the wife may be endowed with it, her claim of dower will cease, because it will be clearly established by the judgment, that her husband was not seysed thereof in domain, although as in fee, but not so in fee that he could endow therewith his wife, and thus a person cannot endow his wife effectually with another person's right on account of the eviction. But when a man has endowed his wife with an estate certain, and another person claims the same estate, and the husband before the judgment has by an agreement acknowledged it and rendered it to her, nevertheless after the death of her husband the exaction of her dower will be maintained to her, if she claims her dower, according to some who have been led by this reason, that the husband may as well remit his own right as another's right, and 'in this doubt she will obtain her dower in whatever way it be acknow-

f. 94. b.

redditione, p pacem. Sed dicunt alii, quòd adeò benè potest recognoscere jus alienum sicut pprium, licèt judicium non intervenerit, & quo casu, cū uxor dotem petierit de re recognita, & excipiat contra, q dotem habere non debeat, cò q vir suus die, quo eam desponsavit non fuit inde seysitus ita in dominico, & ita in feodo q eam inde dotare potuit, & ipsa è contrario dicat q sic, videtur & verum est, cū per negationem efficiatur res dubia, quòd locus sit inquisitioni, non obstante recognitione & concordia, secundum q videri poterit per exempt. Esto, quòd quis alium feoffaverit de aliqua terra, & mortuo feoffato, hærede infra ætatem relicto, deveniat custodia terræ & hæredis in manus dñi capitalis, qui durante custodia alium feoffaverit de eadem terra, qui ducendo uxorem ipse ei in dotem constituerit, cū autem hæres ad ætatem pvenit, ipetret assisā novæ disseysinæ, vel mortis antecessoris, vel breve de ingressu, vel de recto versus tenentem, teñs, sive warrantum vocaverit sive non ante judicium, cum de jure suo constiterit, vel fortè etsi non constiterit, jus petenti recognoscit & ei reddit seysinā & decedit, uxor ejus petit dotem, objicitur ei q vir non fuit ita seysitus in dominico, & ita in feodo quòd eam inde dotare posset, & ipsa è contrario q sic, & petit judicium de recognitione p concordiam, propter prædictum eventum dubium de jure proprio sui viri vel alieno, quo casu, si de jure petentis contra virum suum constiterit, non erit ad aliam probationem ulterius pcedend, sed uxor per hoc cadet ad dotis petitionem. Si autem de jure non constiterit, per patriam

ledged and rendered, peacefully. But others say that he may acknowledge another's right as well as his own, although a judgment has not intervened, and in which case, when the wife claims dower from an estate acknowledged, and it is excepted against her, that she ought not to receive dower, because her husband on the day, on which he espoused her, was not so seysed thereof in domain and in fee, that he could endow her with it, and she on the contrary says that he was so, it appears, and it is true, since a thing is rendered doubtful by the denial of it, that there is room for an inquest, notwithstanding the acknowledgment and the agreement, according as may be seen by examples. Let it be, that a person has enfeoffed another with some land, and the feoffee having died, leaving an heir under age, the wardship of the land and of the heir devolves into the hands of the chief lord, who during the wardship has enfeoffed another with the same land, who upon marrying a wife appoints it to her for dower, but when the heir has come to full age, he obtains an assise of novel disseysine, or of the death of his ancestor, or a writ of entry, or of right against the tenant, the tenant, whether he has called a warrantor or not before judgment, when the claimant's right has been established, or by chance if it has not been established he has acknowledged it and has restored seysine to the claimant, departs, and his wife claims dower, it is objected to her that her husband was not so seysed in domain and in fee as to be able to endow her therewith, and she on the contrary says he was so seysed, and asks for judgment on the acknowledgment by the agreement, on account of the aforesaid doubtful event concerning the proper right of her husband or [the right] of another, in which case if the right of the claimant against her husband is established, it will not be requisite to proceed to any other proof, but the wife through this will fall to her petition of dower. But if her right has not been estab-

f. 95.

Britton,  
l. v. ch. ii.  
§ 5.  
Fleta 343.

veritas inquiratur, hoc tamen adjecto, q videndum erit utrum vir, qui jus alienum recognovit, se defendere possit per exceptionem & non defendit, sed gratis restituit, vel cùm se defendere vellet, & per exceptionem opponeret, iudex per patriam iudicando exceptionem propositam non admisit. In hiis verò casibus non cadit actio dotis, cùm de huiusmodi ratio sit habenda. Poterit etiã cõstitui dos certa & nominata, & incerta & non nominata, & in re aliena sicut in re ppria, ut si quis uxorem suã dotaverit de hæreditate paterna, vel materna in vita eorðem, dum tamen hoc fiat per assensum & voluntatem eorundem, aliter autem, nisi de assensu & voluntate eorundem extiterit, constitutio non valebit. Constare eni poterit multis modis, p instrumentũ & scripturã ubicunq, factã, dum tamen pbari possit q parentes assensum pbuerunt, in qua scriptura non expedit si contineatur, quòd pater vel mater dotem constituerit, sed tamen ille qui duxit uxorem, cùm alius dotem constituere non possit. Item p vivam vocem, ut si pater vel mater vel alius psens parens ad ostium ecclesiæ viva voce ptestetur, q filius suus dotat uxorem suum de hæreditate, quam ipsi tenent, coram pluribus ad hoc vocatis, & quòd voluntarium ad hoc præbent assensum. Et illud idem erit, si alibi quàm ad ostium ecclesiæ ante desponsationem, dum tamen hoc ante desponsationem, vel in ipsa desponsatione revocatũ non fuerit p dissensum, & licet de necessitate fieri debet dotis constitutio, & modus constitutionis ad ostium ecclesiæ, non tamen necesse est omnino quòd ad ostium ecclesiæ adhibeatur consensus, valet eni sive



lished, let the truth be enquired by the country, this however being added, that it will have to be seen whether the husband, who has recognised another's right, can defend himself by an exception, and does not defend himself, but has restored gratuitously, or when he wished to defend himself, and opposed an exception, the judge in judging by the country has not admitted the exception. But in those cases the action does not fall, since regard is to be paid to such matters. There may be likewise appointed a dower which is certain and named, and a dower uncertain and not named, and in another person's property as in one's own, as if a person has endowed his wife with the inheritance of his father or of his mother during their life, provided however this is done with the assent and willingness of the same, but otherwise, unless it has been done with the assent and willingness of the same, the appointment will not be valid. For it may be established in many ways by an instrument or a writing anywhere made, provided it can be proved that the parents have given their assent, in which writing it is not expedient, if it be contained that the father or mother has appointed the dower, but rather he who has taken the woman to wife, since another could not appoint a dower. Likewise by oral parole, as if the father or the mother or other relation being present at the door of the church bears witness by oral declaration, that his son endows his wife with the inheritance, which they themselves hold, in the presence of several persons called for that purpose and that they give their voluntary assent to this. And the same thing shall be done, if elsewhere than at the door of the church before espousals, provided this has not been revoked before espousals, or at the moment of espousals by dissent, and although the appointment of dower ought of necessity to take place, and the mode of the appointment is at the door of the church, it is not altogether necessary that the consent should be given at the door of the church,

f. 95.

matrimonium p̄cedat sive subsequatur cōsensus, ac si valeret, si fieret ad ostium ecclesiæ, dum tamen p̄bati possit, viva voce. Si autem uxor dotata ad probandum consensum instrumentum proferat in iudicio, quòd vir sic dotaverat uxorem p̄ assensum, sufficit illa p̄batio. Si autem p̄ vivā vocem, sufficit quælibet illarum p̄ se. Si autem utramq̄ simul, & convenient, sufficiet unam p̄sequi & probare. Si autem contrariæ fuerint, unam illarum eligere poterit ab initio, & una electa ad aliam recurrere non poterit, cui per electionem renunciavit, & inde si validam elegerit, sufficit, si autem invalidam, amittit, secundū quod videri poterit, cū uxor ad p̄bandum assensum producat vivam vocem & testes, qui dicunt quòd maritus uxoris eam dotavit, & instrumentum similiter probatū ad probationem dicat, q̄ pater vel mater vel alius parens dotavit uxorem, cū deberet dicere eos præbuisse assensum, & unde cū uxor præcisè se tenuerit ad utrumque, neutra valebit, cū sint contrariæ, nisi sit qui dicat, quòd illam, quæ utilis est, sufficit tenere, & quòd utile non est videatur per inutile, & quia valet plus quod actum est q̄ q̄ scriptum, fortè p̄pter errorem scribentis, & benigna interpretatione posset ita interpretari instrumentum, q̄ ad hoc tantū valere debeat, quòd antecessor constitutioni dotis factæ p̄ hæredem p̄buit assensum & p̄pter simplicitatem contrahentiū, secundū q̄ dicitur de layco p̄sentante ad ecclesiam, qui dicit in instrumento p̄sentationis, q̄ dat tali clerico talem ecclesiam sed incongruè, quia episcopus dat, & laycus tantū p̄sentat, ex benigna igitur interpretatione, p̄pter simplicitatem

for it is valid whether the consent precedes or follows matrimony, as it would be valid, if it were made at the door of the church by oral parole, provided it can be proved. But if the endowed wife to prove consent shall produce an instrument at the judgment, that the husband has so endowed his wife with his assent, such proof is sufficient. But if by oral parole, any of those proofs is sufficient by itself. But if by both at once, and they agree, it will be sufficient to follow up one and to prove it. But if they are contrary, she may choose one of them from the beginning, and upon one having been chosen, she cannot have recourse to the other, which she had renounced by her election, and hence if she has chosen a valid proof it is sufficient, but if an invalid one she loses, according to what may be seen when a wife to prove assent produces oral parole and witnesses, who say that the husband of the wife endowed her, and an instrument similarly proved says for proof that the father or the mother or another relative endowed the wife, when it ought to say that they gave their assent, and hence if the wife holds herself precisely to both, neither will avail, since they are contrary, unless there be some one who says, that it is sufficient to hold to that which is useful, and that what is not useful is seen through what is useless, and because that which has been done is of more force, than that which has been written perhaps by an error of the writer, and a benignant interpretation may so interpret the instrument, that it ought to avail for this only, that the ancestor gave his assent to the appointment of dower made by the heir, and on account of the simplicity of the contracting parties, according to what is said of a layman presenting to a church, who says in the instrument of presentation that he gives to such a clerk such a church incongruously, because the bishop gives and the layman only presents, therefore from a benignant interpretation, on account of the simplicity of laymen, it

f. 95 b. laycorum, admittitur quòd nō sit vacua p̄sentatio ppter incongruam dictionem donationis, sed admittitur donatio pro p̄sentatione, dat tamen laycus advocationem ecclesiæ, licet ecclesiam dare non possit. Sed si cū advocationem dederit, dicat in instrumento donationis, quòd dat ecclesiam, valebit donatio advocationis ex benigna interpretatione, propter simplicitatem laycorum, & sic fit interptatio ab antiquis, q cū laic⁹ dicat, Do ecclesiam, dat quicquid juris habet in ecclesia, tā in advocatione, q in p̄sentatione, benignæ enī faciendæ sunt interptationes, ut res magis valeat q pereat. Sed (sine p̄judicio melioris sententiæ) videtur q uterq, dotē constituit pater scilicet & mater vel alius parens, ppter consensum, & vir ppter nominationē dotis, quor̄ neut̄ valet sine alio, nec unū sufficere possit p se, unde si pater instrumentū confecerit sup consensum ad p̄bationem constitutionis, & uxor habuerit vivam vocem ad p̄bationem nominationis, neut̄ istō erit alteri contrarium, & ideò benè simul stare possunt, & nunq valebit nominatio viri sine consensu parentis, nec è contrario, & sic uterq, simul stat. Poterit etiā vir dotare uxore suā de reb⁹ alienis paternis vel maternis, vel utriusq, ipsō, & alteri⁹ antecessoris, p assensum & voluntatē ipsō, eisdē modis quib⁹ de reb⁹ ppriis nominati vel non nominatim acquisitis vel acquirendis, & de illis etiā, sed nominati & specialiter de quibus antecessores nunq fuerunt in seysina, dum tamen post tēpus ad hæredes sunt reversuræ secund' q superiùs dicitur in parte. De dote alterius uxoris, quæ in vita viri nunq

is admitted, that the presentation is not void on account of the incongruous language of the donation, but the donation is admitted as a presentation, the layman, however, gives the advowson of the church, although he cannot give the church. But when he gives the advowson, he says in the instrument of donation, that he gives the church, the donation of the advowson will avail from a benignant interpretation on account of the simplicity of laymen, and so the interpretation is made from ancient time, that when a layman says I give a church, he gives whatever right he has in the church, as well in the advowson as in the presentation, for interpretations ought to be benignant, that a thing should rather prevail than perish. But without prejudice to any better opinion it seems, that each has appointed the dower, the father, for instance, and the mother or another relative by reason of their consent, and the husband by reason of his nomination of the dower, neither of whom avails without the other, nor can one suffice by himself, hence if the father has made the instrument his own by his consent to the proof of the appointment, and the wife has oral parole for the proof of the nomination, neither of them will be contrary to the other, and therefore they may well stand together, and the nomination of the husband will never avail without the consent of the parents, nor the opposite, and so each stands together. The husband may also endow his wife with the property of others, as of his father or of his mother, or of both of them, and of another of his ancestors, through the assent and willingness of themselves, in the same way, in which he may endow her with his own property, by name or not by name, already acquired or to be acquired, and of those things also, but by name and specially, of which his ancestors were never seysed, provided, however, they are about to revert to the heirs according to what has been said above, in part. Concerning the dower of a second wife,

f. 95 b.

Britton,  
l. v. ch. ii.  
§ 6.  
Fleta 343.

fuit deliberata, de alienis verò reb<sup>9</sup> q̄ evinci poterunt, non valet dotis constitutio cum effectu. Itē si cūm pater uxorem habuerit, & ei dotem constituerit in tertia parte hæreditatis sc. de trib<sup>9</sup> unciiis unā, & de consensu ipsius, vivente matre, constituat filius uxori suæ dotem, non poterit eā dotare, nisi de tertia parte duar' partium sc. duar' unciarum, quia mater dotata est de parte totius, s. de tertia parte trium uncia'. Si autem pater uxorem non habuerit, cūm filius uxorem suā dotaverit, & facta cōstitutione à filio de consensu patris, tunc pater post uxorem duxerit, tunc fiat è contrario illius, q̄ supra dict' est, & secundū q̄ inferiūs dicitur, de actione dotis. Vident' etiā, si postq̄ dos semel fuerit ritè cōstitutā, in reb<sup>9</sup> ppriis vel alienis de cōsensu, ex aliqua conventionē facta inter vir' & uxorem, constante matrimonio, augmentari possit in p̄judicium vel ad dampnum hæredis, & dicitur q̄ nō, ut de itinere W. de Raleigh in cōm Midd', assisa mortis antecessoris, si Johannes Blund<sup>9</sup>, & unde videtur, q̄ eadem ratione, minui non debet in p̄judicium uxoris. Facta sic cōstitutione dotis ut p̄dict' est, non poterit uxor in vita viri circa dotem constitutā nominatā quis certā, aliquid disponere, cūm inde liber' teneñtū habere non possit ante assignationem, nec uxor viro contradicere possit, si velit dotem vendere vel alienare, q̄ si faceret, de jure dotem amitteret, quòd si vir alienaverit, licet uxor in vita non potuit cōtradicere, ipsa tamen post mortem viri, regressum habebit versus quos-

which has never been delivered during the lifetime of the man, of the property indeed of others which may be evicted, the appointment of dower does not avail with effect. Likewise if a father has a wife, and has appointed her a dower of the third part of the inheritance, that is, one third part out of three, and with his consent, during the lifetime of his mother, his son appoints a dower to his wife, he cannot endow her with more than a third part of the two parts, that is, of the two thirds, because the mother has been endowed with a third part of the whole estate, that is, with a third part of the three thirds. But if the father has not a wife, when the son has endowed his wife, and an appointment [of dower] having been made by the son with the consent of the father, then the father afterwards takes a wife, then the contrary takes place of what has been said above, and according to what will be said below concerning an action for dower. It is also to be seen, if after the dower has been duly appointed in the property of the husband or of others with consent, upon some agreement made between the man and his wife, whilst the marriage lasts, it can be augmented to the prejudice or damage of the heir, and it is said that it cannot be done, as in the circuit of Walter de Ralegh in the county of Middlesex, at an assise of the death of an ancestor, if John Blundus, and hence it seems that for the same reason it cannot be reduced to the prejudice of the wife. An appointment of dower having been made as above said, a wife cannot during the life of her husband dispose of any thing of her dower appointed by name and certain, since she cannot have a free tenement thereof before its assignment, nor can the wife contradict her husband if he wishes to sell or alienate the dower, which if she were to do, she would of right lose her dower, but if the husband should alienate it, although the wife cannot contradict him during his life, she may after the death of her husband have redress against those who

cunq; detentores. Sed si p iudicium vel p concordia ut p̄dict' est, vel ppter delict', (secund q inferiùs dicitur) uxor regressum non habebit.

## CAP. XL.

1. Mortuo viro, confirmatur tunc primò dotis constitutio, & si dos deliberata ei fuerit, statim fiat ei dotis assignatio, sine aliqua difficultate, & nihil det pro dote sua, vel maritaggio, vel hæreditate sua quam maritus & ipsa tenuerūt die obitus ipsi<sup>9</sup> mariti, & maneat in capitali mesuagio mariti sui per quadraginta dies post obiit mariti, infra quos assignetur ei dos sua, nisi priùs ei fuerit assignata, vel nisi domus illa fuerit castrum, & de castro illo si recesserit, statim provideatur ei domus competens, in qua possit honestè morari, quousque dos sua ei assignetur secundùm quod prædictum est, & habeat rationabile estoverium suum interim de communi, & pro dote sua, cùm fuerit ei deliberata, assignetur ei tertia pars totius terræ mariti sui, quæ sua fuit in vita sua, vel alio modo satisfaciat ei secundùm quod ad ostium ecclesiæ dos fuit ei constituta, nec distringatur ad maritandum se, dum vivere voluerit sine viro, & ita tamen, quòd securitatem faciet capitali domino, quòd se non maritabit sine assensu suo, de quocunque tenere debeat, de domino rege, vel de alio. Item quis debeat dotem assignare videndum, cùm mulier per se authoritate propria non possit se ponere in seysinam, propter assisam mortis antecesso-

Quod uxor  
vidua re-  
manere  
debet in  
capitali  
mesuagio  
per quad-  
raginta  
dies post  
mortem  
viri, donec  
dos sua  
fuerit ei  
assignata,  
et de dotis  
assigna-  
tione post  
mortem  
viri.  
Britton,  
l. v. ch. iii.  
§ 1.  
Fleta 344.



detain it whomsoever. But if it be through a judgment or a convention, as aforesaid, or through a misdemeanour (according to what will be said below), the wife shall not have any redress.

## CHAPTER XL.

f. 96.

Upon the death of the husband the appointment of the dower is for the first time confirmed, and if the dower has been delivered to her, let an assignment of her dower be forthwith made without any difficulty, and let her give nothing for her dower or her maritage or her inheritance, which her husband and herself held on the day of the death of her husband, and let her remain in the chief mesuage of her husband for forty days after the death of her husband, within which days let her dower be assigned to her, unless it has been previously assigned to her, or unless her house shall be a castle; and if she shall have withdrawn from that castle, let there be forthwith provided for her a suitable house, in which she may honestly dwell, until her dower is assigned to her according to what has been said above, and let her have her reasonable maintenance from the common stock; and for her dower, when it has been delivered to her, let there be assigned to her the third part of the whole land of her husband, which was his in his lifetime, or let satisfaction be made to her in some other manner according to what has been appointed to her at the door of the church, nor let her be constrained to marry herself, whilst she wishes to live without a husband, and on such terms however, that she shall give security to the chief lord, that she will not marry herself without his assent, from whomsoever she ought to hold, from the lord the king or from another. Likewise it is to be considered who ought to assign the dower, since the woman cannot of her own authority put herself into seysine, on account of the assise of the death of an ancestor, since the heir ought

1.  
That the widowed wife ought to remain in the chief mesuage forty days after the death of the husband, until her dower has been assigned to her, and concerning the assignment of dower after the death of the husband.

ris, cūm hæres primam seysinam habere debeat cūm fuerit plenæ ætatis, vel dominus capitalis nomine hæredis, si hæres fuerit infra ætatem. Et sciendum, quòd hæres cūm fuerit plenæ ætatis, & non dominus capitalis, quia se intromittere non debet, nisi contentio fuerit de hæreditate. Cūm autem hæres fuerit infra ætatem, tunc dominus nomine hæredis infra quarentenam, alioquin currit tempus, & sequantur dampna, nisi excuset rationabilis causa.

2.  
Qualiter  
dos fuerit  
ei assignanda.

Si autem tota dos vacaverit, tunc infra quadraginta dies assignetur ei dos sua legitima, & secundū quod ei ad ostium ecclesiæ fuit constituta, secundū quod tunc fuerit culta vel inculta, cum fructibus & redditibus, & omnibus aliis pertinentiis, & nihil refundatur executoribus vel hæredibus pro cultura & cura, quia antiquit̃s solet observari, quòd sicut uxor dotem suam recipit post mortem viri sui cultam vel incultam, ita post mortem uxoris solet restitui hæredi culta vel inculta, quia de bladis & fructibus à tenemento non separatis non habuit uxor testamenti factionem, sed nova superveniente gratia & provisione, sicut patet de provisionibus apud Merton,<sup>1</sup> inter placita quæ sequuntur regem Henricum anno regni sui decimo octavo, poterit uxor de fructibus & bladis, sive à solo separata fuerint, sive non, testari, & pro voluntate sua dispo-  
nere. Si autem pars dotis vacaverit, & pars non, tunc illam partem, quæ vacaverit, recipiet, & non vacantem petat per actionem per breve de recto si voluerit, nisi de consilio ad tempus duxerit abstinendum, ne per receptionem partis, sibi præjudicet quantum ad exactionem residui, propter dilationem quæ venire poterit

<sup>1</sup> "Apud Merton." Such is the reading of MSS. Rawlinson, C. 160 and C. 159.

to have the first seysine, when he is of full age, or the chief lord in the name of the heir, if the heir be under age. And it is to be known that the heir, when he is of full age, and not the chief lord, because he ought not to intrude himself, unless there should be a dispute about the inheritance. But when the heir is under age, then the lord in the name of the heir within the forty days, otherwise time runs, and losses may follow, unless a reasonable cause excuse.

But if the whole dower has been vacant, then let her legitimate dower be assigned to her within forty days, and according to what has been appointed to her at the door of the church, according to what it was at that time, cultivated or uncultivated, with its fruits and revenues and all its other appurtenances, and let nothing be refunded to the executors or to the heirs for its cultivation or management, because it has of old been accustomed to be observed, that just as a wife receives her dower after the death of her husband, cultivated or uncultivated, so after the death of the wife it has been accustomed to be restored to the heir, cultivated or uncultivated, because the wife had no power to make a will of the crops and fruits not separated from the tenement: but by a new supervening grace and provision, as is apparent from the provisions of Merton, amongst the pleas which follow the King Henry in the eighteenth year of his reign, a wife may make a will and dispose according to her pleasure of the fruits and crops, whether they have been separated from the soil or not. But if a part of the dower has been vacant, and a part not, then she shall receive that part which is vacant, and let her claim by an action the part, which is not vacant, by a writ of right if she wishes, unless upon advice she has considered it expedient to abstain for a time, lest by the acceptance of a part she should prejudice her right to exact the residue, on account of the delay which may ensue through a writ of right, if she should receive anything therefrom, on

2.  
In what  
way dower  
is to be  
assigned  
to her.

f. 96 b.

per breve de recto, si aliquod inde recipiat, propter verba in brevi de dote contenta, scilicet, “& unde nihil habet,” secundum quod inferius dicetur inter actiones de exceptionibus contra petitionem dotis. Cùm autem nihil vacaverit tempore, quo vir moritur, sed tota hæreditas alienata extiterit in manib<sup>9</sup> alioꝝ, nō habent tenentes necesse statim dotem restituere, nisi velint, cùm justam causam habeāt resistendi, & vocādi warrentum suum, unum vel plures successivè usq; ad personam hæredis & warrenti uxoris de dote sua, infra quod tempus non tenentur mulieri ad restitutionem dampnorum, vel expensarum. Qui quidem, cum warrantizaverit, statim dotem restituat mulieri, nisi justam causam habuerit resistendi, quam si non habuerit, sed resistat per malitiam, omnia dampna restituet mulieri petenti, secundum valorem totius dotis illam contingentis à tempore mortis viri sui, & omne interesse, quatenus suā interfuit dotem suā habuisse usque ad diem, quo seysinam suam per iudicium recuperaverit, & nihilominus warrentus in misericordia remanebit. Et illud idem erit, si cū dos tota vacaverit, die quo maritus obierit, & nihil fuerit alienatum in vita sua, si uxor se in dotem nominatam posuerit, & inde ante assignationem ejecta fuerit, nec fuerit ei satisfactum sine placito & dilatione, & hoc semper erit tenendum, nisi hæres vel custos justam causam habeant resistendi. Illud etiā erit, si à tenemento, quod ei assignatum est ad quarentenā suam, ante assignationem dotis ejiciatur infra quarentenam vel post. Item illud idem, si omnino extrā teneatur, quòd non habeat ubi caput suum recl-

account of the words contained in a writ concerning dower, for instance, "and whence she has nothing," according to what will be explained<sup>1</sup> below amongst the actions concerning exceptions against a claim of dower. But when nothing is vacant at the time when the husband dies, but the whole inheritance is alienated and in the hands of others, the tenants are not necessarily obliged to restore the dower, unless they are willing, f. 96 b. when they have a just cause for resisting and calling their warrantor, one or more successively up to the person of the heir and the warrantor of the dower to the wife, within which time they are not bound to the wife to make restitution of her losses and expenses. Who indeed, when he has warranted, should forthwith restore the dower to the woman, unless he has a just cause for resisting, which if he have not, but he resists from malice, let him make good all the losses to the woman claimant, according to the value of the whole dower falling to her at the time of the death of her husband, and all the interest, as far as it was her interest to have her dower up to the day when she recovered her seysine by a judgment, and nevertheless the warrantor shall be liable to be amerced. And the same thing will happen, if when the whole dower has been vacant on the day when the husband died, and nothing has been alienated during his life, if the wife has put herself into the dower named, and has been ejected thence before the assignment, nor has satisfaction been made to her with a plea and a delay, and this will always have to be maintained, unless the heir or the guardian have just cause of resisting. The same thing will happen, if she has been ejected before the assignment of dower from the tenement, which has been assigned to her for her quarantaine, within her quarantaine or after it. The same thing will happen, if she be kept out altogether, so that she has not where to

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<sup>1</sup> The words "et unde nihil habet ut dicit" form part of the writ as set forth below in folio 296 b.

net. Si autē cūm tota vacaverit, & hæres contendere nolit, sed gratis & sine placito ei dotem restituere velit, videndū est q̄ sint ei nomine dotis restituēda. Et si de incerta parte fiat dotis constitutio ad ostiū ecclesiæ, de acquisitis sc. & acquirendis, conveniens erit q̄ hæres ei assignet in dotem tertiam partem totius liberi teneñti, q̄ habuit antecessor su<sup>9</sup> in dominico suo ut de feodo die, quo eam desponsavit, & ita in dominico & feodo, quòd eā inde dotare potuit, & hæc vera sunt, nisi constitutio dotis alio modo tempore constitutionis ad ostium ecclesiæ facta fuerit, & quo casu sequenda erit constitutio, cū de ea cōstiterit. Integrè enī & non p̄ particulas, vel in parte, fieri debet assignatio, sc. de oīb<sup>9</sup> terris & teneñtis, secund' mod' constitutionis. In dominicis, villenagiis, feodis militum, homagiis, & servitiis liberoꝝ hominum, in advocationibus ecclesiā, & secund' quod fuerit nominatim dotata vel non nominatim, cūm advocatione vel sine, & sive ibi sunt plures advocationes sive una, semper in constitutione dotis, & in assignatione erit habenda inde ratio, ut vel unam ex pluribus retineat, vel quòd ei inde aliunde satisfaciāt ad valentiam, cūm advocationes aliquando non recipiant divisionem : & semper tenend<sup>9</sup> est mod<sup>9</sup> constitutionis. Et licet de advocationib<sup>9</sup> in constitutione dotis nulla facta sit mentio, nec in assignatione, nec sit in hæreditate nisi unica ecclesia, cūm post mortem viri, in vita uxoris, non debet hæres de jure illam conferre sine assensu uxoris. Sed quid si noluerit consentire ? hæres, qui duas partes habet in p̄sentatione,

Britton,  
l. v. ch. iii.  
§ 5.  
Fleta 345.

lay her head. But if when the whole [dower] is vacant, and the heir is unwilling to contest it, but gratuitously and without a plea is willing to restore her dower to her, it is to be considered what is to be restored to her under the name of dower. And if there be an appointment of dower at the door of the church of an uncertain part from property acquired for instance, or to be acquired, it will be suitable, that the heir should assign to her for dower the third part of the whole free tenement, which his ancestor had in his domain, as of fee, on the day on which he espoused her, and so in domain and in fee that he could endow her therewith, and these things are true, unless the appointment of dower has been made in a different manner at the time of its appointment at the door of the church, and in which case the appointment is to be observed, when it has been clearly established. For the assignment should be made as a whole and not in parcels, nor partially, namely of all the lands and tenements according to the mode of appointment. In domains and villenages, military fiefs, homages, and the services of free men, in advowsons of churches, and according to what has been given for dower by name or without name, with the advowson or without, and whether there has been more advowsons or one, regard is always to be had thereto in the appointment of dower and in the assignment of it, so that she should retain one out of many, or that satisfaction should be made to her for its value from other sources, since advowsons sometimes do not admit of division, and the mode of the appointment is always to be observed. And although no mention has been made of the advowsons in the appointment of dower, nor in the assignment of it, and there is only a single church on the inheritance, after the death of the husband and during the lifetime of the wife the heir ought not of right to confer it without the consent of the wife. But what if she be unwilling to consent? The heir, who has two parts in the pre-

Britton,  
1. v. ch. iii.  
§ 5.  
Fleta 345.

f. 97.

preferetur, quia quavis ecclesia magni valoris extiterit, tamen occasione dotis non dividitur, quia non patitur secationem, & maximè quia ab antiquo divisa non fuerit. Si autem de advocatione non sit mulieri aliter satisfactum, videtur prima facie, quòd si in vita ipsius ter vacaverit, quòd de æquitate tertiam habere debeat presentationem. Sed refert ad hoc qualiter sit dotata, & dos ab initio constituta: si autem de tertia parte, & nō sit nisi unicum maneriū & una advocatio, vel si ibi sint plura maneria et plures advocationes, nil petere possit uxor de advocationibus ratione suæ tertiæ partis, nisi in ipsa dotis cōstitutione vel assignatione specialiter convenerit, quod aliquid inde habere debeat, et est ratio. Esto quòd quis habeat maneriū aliquod integrum cum advocatione ecclesiæ, et inde partem dederit tertiam vel dimidiam vel minimam uni, et postea alii alteram partem, et sic successivè pluribus usq. ad unam acram, vel etiam minimam partem, dum tamen aliquid retinuerit, licet quælibet pars magna sive minima data sit cum omnimodis pertinentiis suis, donator semper advocationē integrè retinebit, nisi specialiter cum aliqua particula data transferatur, et sive donatio facta fuerit simul et semel, et una die, uni vel pluribus successivè, & unde cū tertia pars ubique cōstitutā sit et assignata uxori nomine dotis, nulla facta mentione de advocatione, nihil transferri potest de advocatione ex talis partis constitutione cum tertia parte assignata p. dote, et unde non poterit uxor aliquid petere de advocatione ex tali dotis constitutione, nisi aliter inde specialiter cōvenerit in ipsa cōstitutione vel assignatione,



sentation, shall be preferred, because although the church may be of great value, nevertheless it is not divided on occasion of dower, for it does not admit of being cut into two, and chiefly because from ancient time it has not been divided. But if satisfaction has not been made to the woman in the matter of the advowson from another source, it seems at first sight that, if it has become vacant three times in her lifetime, that she ought of equity to have the third presentation. But it is of importance for this purpose how she has been endowed and how the dower has been appointed originally; and if it has been of the third part and there is only a single manor and one advowson, or if there be three several manors and several advowsons, the wife cannot claim anything of the advowsons by reason of her third part, unless in the appointment or in the assignment of dower it has been specially agreed, that she ought to have something therefrom, and it is reasonable. Let it be, that a person has a certain entire manor with the advowson of the church, and he gives a third part or a half or a very small part to one person, and afterwards to another person another part, and so successively to several persons down to one acre, or even the smallest part, provided however he retains something, although any either great or small part has been given with all its appurtenances, the donor will always retain the advowson entirely, unless it shall have been specially transferred with a certain given part, and whether the donation has been made at one and the same time, and on one day, to one or to several successively, and hence when the third part has been every where appointed and assigned to the wife in the name of dower, no mention having been made of the advowson, no part of the advowson is transferred by such an appointment of dower with the third part assigned for dower, and hence the wife cannot claim any part of the advowson from such an appointment of dower, unless it has been specially agreed thereon in the very appointment and assignment, that the

f. 97.

quòd tota advocatio transferatur cum parte assignata. Si autem dotata fuerit de aliquo manerio integro, ad q<sup>uod</sup> ptinuerit advocatio, cum omnib<sup>us</sup> ptinentiis suis, sine aliqua retētionē vel exceptione, advocatio transit cum universitate et ipsa re, cū specialiter retenta non sit nec excepta. Et eodem modo fiet si p<sup>er</sup> tertia parte fuerit ei aliq<sup>uod</sup> manerium cum ptinentiis assignatū. Item esto q<sup>uod</sup> quis ita dicat in donatione sua, Do tali manerium tale cum omnib<sup>us</sup> ptinentiis suis, videtur p<sup>er</sup> hæc, omnia transferre ad donatarium, et advocationē, si ibi fuerit: si dicat postea, excepta tanta terra ad op<sup>us</sup> meum, cū igitur ab initio totum transferat, & ab illo toto certā partem extra capiat, videtur q<sup>uod</sup> advocatio non revertatur ad ipsum cum parte excepta, sed verum est q<sup>uod</sup> debeat cum donatario remanere. Si autē sic dicat, Do tali tale maneriū cum omnib<sup>us</sup> ptinentiis suis nulla facta mentione de advocatione, et postea dicat, retēta mihi tanta terra, vel præter tantam terram quam retineo, advocatio cum parte retenta remanebit donatori, et illud idem erit, salva mihi tanta terra.

3. Cū autem sic dotata fuerit, ut prædictum est, de tertia parte cum advocatione nominatim & expressè, vel cū de manerio integro expressè cū advocatione, vel sine expressione, dum tamen sine exceptione, benè poterit ecclesiā cōferre cū vacaverit, & quotiens vacaverit, sed illā dare non poterit loco religioso, vel alibi, antequam vacet & sit in possessione præsentādi, quò magis impediatur præsentatio hæredis & warrēti sui, q<sup>uod</sup> si fecerit, hæres restituetur ad seysinam præsentationis sui vel antecessoris sui p<sup>er</sup> assisam, q<sup>uod</sup> si præsentaverit uxor in viduitate sua post mortem viri qui dotavit

Qualiter  
advocatio  
ecclesiæ  
transferatur  
in dotis  
assignationem,  
et qualiter  
non, et  
quod aliud  
est dare  
ecclesiam  
et advocationem  
ecclesiæ.

whole advowson should be transferred with the part assigned. But if she has been endowed with any entire manor, to which an advowson appertains, with all its appurtenances, without any reservation or exception, the advowson passes with the whole body and the estate itself, since it has not been specially reserved or excepted. And in the same manner it will take place, if for her third part there has been assigned to her a certain manor with its appurtenances. Likewise let it be that a person in his donation says thus, I give such a manor with all its appurtenances to such a person, he appears by these words to transfer everything to the donee, and the advowson, if it be there; if he say afterwards, excepting so much land for my use, when then he at the commencement transfers the whole and from that whole takes out a certain part, it appears that the advowson does not return to him with the part excepted, but it is true, that it ought to remain with the donee. But if he say thus, I give to such a person such a manor with all its appurtenances no mention having been made of the advowson, and says afterwards, reserving to myself so much land, or except so much land which I retain, the advowson will remain to the donor with the part reserved, and it will be the same, saving to myself so much land.

But when she has been so endowed as aforesaid with the third part conjointly with the advowson by name and expressly, or with an entire manor expressly with the advowson or without the expression, provided it be without any exception, she may properly confer the church when it is vacant, and as often as it is vacant, but she cannot give it to a religious body or to any one else, before it is vacant and she is in possession of the presentation, in order to impede the presentation of the heir and her warrantor, which if she should do, the heir will be restored to the seysine of his presentation or of his ancestor's presentation by an assise, but if the wife has presented during her widowhood after

3.  
In what way an advowson of a church is transferred for the assignment of dower, and in what way not so, and it is a different thing to give a church, and to give the advow-

eam, vel si nupserit secundo, et ipsi simul dederint  
advocationem loco religioso, vel alicui privatæ psonæ,  
p hoc auferetur seysina præsentationis suo warranto,  
et warrantus post mortem uxoris non audietur, nisi  
tantum sup pprietate p breve de recto, & quo casu  
donatari<sup>9</sup> warrantum vocabit donatorem, vel ejus hæ-  
redē, ut excambium consequatur. Sed quid si cūm  
uxor secundum virum suum supervixerit, et advocatio-  
nem petat p breve de ingressu, eò quòd viro suo cō-  
tradidere nō potuit in vita viri, nec finis nec chiro-  
graphū intervenerit in curia regis, quæritur an audiri  
debeat? Et videtur quòd sicut de qacunq; alia re.  
Itē si cūm ipsa petere ceperit p breve de ingressu,  
warrant<sup>9</sup> su<sup>9</sup> similiter agere incipiat p breve de recto,  
uxor in hoc casu erit pferenda, & si illa obtinuerit, p  
hoc jus warranti reformabitur ei, ut eandē seysinā,  
quam uxor habuit, habeat warrant<sup>9</sup> post mortē uxoris,  
& si in pbatone juris defecerit uxor, videtur quòd  
remanere debet actio warrāti usq; ad mortē uxoris, ac  
si esset, si ipsa p se in viduitate sua post p̄sentationē  
dedisset advocationem. Et longè aliud est dare eccle-  
siam, quàm dare advocationem, quia qui advocationē  
dat, transfert ecclesiā, & ipsum jus p̄sentandi, s. sey-  
sinā, cūm fuerit in seysina p̄sentandi. Si autem eccle-  
siam dederit quis alicui, qui ad præsentationē admit-  
tatur, retinet sibi jus p̄sentandi & seysinam ut jus  
patronatus, cuicumq; sic facta fuerit donatio, privatæ  
psonæ, vel loco religioso, in pprios usus, vel alio modo.

f. 97 b.

the death of the husband who endowed her, or if she has married another husband, and they shall have together given the advowson to a religious body or to some private person, the seysine of the presentation will be by such means taken away from her warrantor, and the warrantor after the death of the wife shall not be heard, except only upon the property by a writ of right, and in which case the donee shall call the donor or his heir to warrant, that he may obtain compensation. But what if, when the wife has survived her second husband, and claims the advowson by a writ of entry, on the ground that she could not contradict her husband during his lifetime, and no fine nor chirograph in the Court of the King has intervened, it is asked whether she ought to be heard? And it seems that [she should be heard] as in any other matter. Likewise if, when she herself has commenced her claim by a writ of entry, her warrantor in like manner begins an action by a writ of right, the wife in this case is to be preferred, and if she prevails, the right of the warrantor will thereby be reformed so that the warrantor shall have after the death of the wife the same seysine, which the wife had, and if the wife fails in her proof of right, it seems that the action of the warrantor ought to remain until the death of the wife, as if it were the case, that she of herself during her widowhood after the presentation had given the advowson. And it is a far different thing to give a church from giving an advowson, because he who gives the advowson, transfers the church and the right itself of presenting to it, that is the seysine, when he was in the seysine of the presentation. But if a person gives a church to another, who is admitted to the presentation, he retains to himself the right of presenting and the seysine as the right of patronage, to whomsoever the donation may have been so made, to a private person or to a religious place, for their own uses or in some other manner.

son of a  
church.

f. 97 b.

Itē esto, quòd prim<sup>o</sup> vir, qui dotavit nominatim cum advocatione vel alio modo, ut prædictū est, in vita sua advocationem dederit alicui loco religioso, hæres ejus, cū obierit, tenetur advocationem illam, quam antecessor suus incumbavit, deliberare si possit, vel ei satisfacere ad valentiam si non possit, & si illam uxori deliberaverit, illa poterit ad ecclesiam illam præsentare, si vacaverit. Et sive vacaverit, sive non, advocatio illa post mortē uxoris revertetur domui religiosæ, ppter donum primi viri, quod firmum esse debet. Cū autem de tertia parte dotata fuerit, & tota dos vacaverit, sive in uno manerio sive in pluribus, de nullo, q de sua natura indivisibile sit & secationem sive divisionem non patiatur, nullam partem habebit, sed satisfaciat ei ad valentiam alibi. Item nec de aliquo q de consuetudine dividi non solet: quia esto, quòd vir non haberet nisi unicum manerium suum, sive illud fuerit caput baroniæ, vel non, uxori non assignabitur in tertia parte sua aliquid de capitali mesuagio, ipsa enim nihil capiet de capitali mesuagio, sive un<sup>o</sup> sit ibi hæres, sive plures, quia ipsa partem non capit, sicut facit cohæres particeps cum cohærede particeps. Nihil enim capiet de capitali mesuagio, secūdū q vallatū fuit & inclusum fossato, haya, vel palatio. De hac materia inveniri poterit de termino Sanctæ Trinitatis anno regni regis H. septimo in cōm Essex de quadā Idonea petēte dotem. Item nec de aliquo q infra clausum cōtineatur, sicut de gardinis, servoriis, vel vivariis. De hñodi vero si fuerint extra, erit inferiùs dicēdū, quid juris. Sed cū nihil capere possit de capitali mesuagio, & ipsa sine mesuagio esse nō debeat, eligat ipsa de vilenagiis honestū aliq, & q competens ei esse videatur

Likewise let it be, that the first husband, who endowed [his wife] by name with an advowson or in any other way, as aforesaid, has given during his lifetime the advowson to some religious place, his heir after his death is bound to deliver to her, if he can, that advowson which his ancestor has encumbered, or to satisfy her up to its value, if he cannot, and if he has delivered it to the wife, she will be able to present to it, if it has become vacant. And whether it has become vacant or not, that advowson after the death of the wife will revert to the religious house on account of the gift of the first husband, which ought to remain firm. But when she has been endowed with the third part, and the whole dower has become vacant, whether in one manor or in several, she shall have no part of any thing, which is of its own nature indivisible and does not admit of being cut or divided, but satisfaction shall be made to her elsewhere of its value. Likewise not of anything, which by custom is not accustomed to be divided: because let it be, that a man has only a single manor of his own, whether that be the head of a barony or not, there shall not be, assigned to the wife in her third part any thing of the chief mesuage, for she shall take nothing of the chief mesuage, whether there be one heir there or several, because she herself does not take a part, as a coheir parcener does with a coheir parcener. For she shall take nothing of the chief mesuage, according as it is surrounded and enclosed with a fosse, or a hedge, or a palace. On this subject a case will be found in Holy Trinity Term in the sixth year of King Henry in the county of Essex respecting a certain Idonea claiming dower. Likewise not of any thing, which is contained within the close, as of gardens, stews, or fishponds. But if there be such things outside the close, we shall discuss below, what right there is to them. But since she can take nothing of the chief mesuage, and ought not to remain without a mesuage, let her choose of the villenages some honest one and which seems to

& inde se teneat cōtentā. Si autē nullū mesuagiū inveniat in villenagio, tunc pvideat ei in loco cōpetenti quædā platea, quæ ei sufficere possit ad mesuagiū, ad valentiā itis partis, s. in latū et longū, & non ad valentiam ædificiorum, & fiat mesuagium de bosco cōmuni. Si autem nullū sit mesuagium de villenagio, nec aliquid in dñico ubi fieri possit mesuagium, tunc de necessitate recurrendū erit ad capitale mesuagiū, sicut in burgagiis ad liberū bancū. Et hæc oīa vera sunt, nisi ab initio velit hæres ei gratis partē cōcedere de capitali mesuagio, q̄ benè licitum erit, cūm hæres hoc voluerit. Item si in eodem manerio, in quo

f. 98. tertia pars erit ei assignanda, fuerint plura capitalia mesuagia, duo, vel plura, ipsa ad minus unicum habebit, dum tamen hæres electionem habeat. Si autem nominatim & integrè dotata fuerit de aliquo manerio, vel qualitercunq̄ fuerit dotata, si convenerit inter ipsam & hæredem, quòd habeat manerium aliquod integrè pro dote, illud totum habebit cum mesuagio & aliis pertinentiis, nisi aliquid fuerit specialiter exceptum, vel nisi valor excedat dotem rationabilem. Item cūm assignanda fuerit ei tertia pars, facta assignatione de mesuagio, assignetur ei tertia pars de omni, quod vir suus tenuit in dominico, secundū statum præsentem in terra arabili, secundū quod fuerit culta vel inculta, seminata vel non seminata, & si fuerit seminata vel non seminata, nihil dabit pro cultura. Item assignetur ei tertia pars de pratis, boscis, pascuis, pasturis, & de omnibus aliis commoditatibus, exceptis parcis vivariis, de quibus nihil percipiet. Nihil enim ampliùs percipiat de piscibus & feris in parcis inclusis, quàm de animalibus, & ovibus in ovilibus, eo excepto, quòd si

Britton,  
l. v. ch. iii.  
§ 6.  
Fleta 345.



be suitable to her and let her be content therewith. But if she finds no mesuage in villenage, then let there be provided for her in a suitable place a certain open site, which will suffice for a mesuage, to the value of a third part, that is in breadth and in length, and not to the value of the buildings, and let a house be built of the common timber. But if there be no mesuage in the villenage, nor any part of the domain in which a mesuage may be built, then of necessity recourse must be had to the chief mesuage, as in burgage tenures to the Free Bench. And all these things are true, unless from the beginning the heir wishes to concede to her gratuitously a part of the chief mesuage, which is perfectly allowable, when the heir is willing. Likewise, if in the same manor, in which a third part is to be assigned to her, there shall be several chief mesuages, two or more, she shall have at least a single one, provided, however, that the heir shall have the choice. But if she has been endowed by name and in its entirety with a certain manor, or in whatever way she may have been endowed, if it has been agreed between her and the heir, that she shall have one manor entirely as her dower, she shall have it altogether with the mesuage and other appurtenances, unless something has been specially excepted, or unless its value exceeds a reasonable dower. Likewise, when a third part is to be assigned to her, the assignment of the mesuage having been made to her, let a third part be assigned to her of every thing, which the husband held in domain, according to its present state in arable land, according as it is cultivated or uncultivated, sown or unsown, and if it be sown or not sown, she shall give nothing for the cultivation. Likewise let there be assigned to her a third part of the meadows, woods, grass, pastures and of other commodities, excepting parks of live animals, of which she shall receive nothing. For she shall receive nothing more of the fish and wild animals in inclosed parks, than of animals and of sheep

f. 98.

piscariæ ibi fuerint, quarum commoditates dependent ex insidiis fortunæ, ibi percipiet tertiam partem commoditatis, vel tertium piscem, vel jactum retis tertium, secundum quod convenerit. Item assignanda erit ei tertia pars villenagii, quod est quasi dominicum. Item tertia pars servitiorum liberorum hominum, & de quibus habebunt custodias & relevia, salvis tamen homagiis dominis capitalibus. Item habebit hæredum maritalia. Item habebit eschaetas sive venerint propter defectum vel propter delictum, sed hoc non nisi ad vitam, quia post mortem pertinet ad hæredem: & generaliter omnes commoditates ex dote provenientes uxoris erunt, quoad vixerit, nisi hoc fortè auferat cōventio specialis.

4.  
Quod dcs  
libera esse  
debet.

Assignata dote, libera debet esse dos, nihil enim conferet uxor de dote sua ad debita mariti acquietanda, quia si peculium mariti non sufficiat ad debita, quicquid fuerit ulteriùs solvendum, hæredem & hæreditatem onerabit. Item hæres tenetur dotem suam defendere & warrantizare, & pro ea sequi comitatus, hundredas, & curias dominorum. Ipsa enim ad alia intendere non debet, nisi ut domui suæ disponat, & ut pueros suos, si qui fuerint, nutriet & educat. Curiam autem suam propriam habere debet de omnibus placitis, quæ ad ipsam pertinent, terminandis. Placita verò per breve de recto placitari debent & terminari in curia hæredis, & warrenti sui de dote sua, propter vinculum homagii, quod inter liberos tenentes suos & warrentum de dote sua non est dissolutum, & quia ipsa placitum super recto tenere non poterit, cum non habeat nisi liberum tenementum. Item nec pertinent ad ipsam placita, quæ pertinent ad coronam, pro justitia & pace domini regis, quia nullus hujusmodi placita

in the sheep-folds, with this exception, that if there be fishponds, the advantages of which depend upon the snares of fortune, she shall thence derive a third part of the advantage, or a third fish, or a third cast of the net, according as shall be agreed upon. Likewise a third part of the villenage is to be assigned to her, which is as it were domain. Likewise a third part of the services of the free-men, and of those of whom they have the wardships and the reliefs, saving always the homage to the chief lords. Likewise she shall have escheats, whether they fall in on account of defect or delict, but this only for her life, because after her death it belongs to the heir, and generally all advantages resulting from the dower shall belong to the wife, as long as she lives, unless by chance a special agreement has taken them away.

Upon dower having been assigned, the dower ought to be free, for the wife shall contribute nothing from her dower to acquit the debts of her husband, because if the special property of the husband is not sufficient for his debts, whatever further has to be paid, shall be a charge upon the heir and the inheritance. Likewise the heir is bound to defend and to warrant his dower, and in defence of it to attend counties, hundreds, and the courts of lords. For she herself is not bound to attend to other things, except to manage her house, and to nourish and educate her boys, if she has any. For she ought to have her own court for the determination of all pleas which concern herself. But pleas by a writ of right ought to be pleaded and determined in the court of the heir, the warrantor of her dower on account of the tie of homage which is not dissolved between her free tenants and the warrantor of her dower, and because she cannot maintain a plea of right, since she has only a free tenement. Likewise the pleas, which appertain to the crown, in defence of justice and the peace of the king, do not pertain to her, for no one can

4.  
That dower  
ought to  
be free.

placitare poterit, nisi hoc eis specialiter concessum fuerit, sicut justitiariis domini regis, sicut placitum per breve de recto, visus franci plegii, placita de vetito namii, si latro fuerit judicandus, vel si transgressum sit contra assisas domini regis, hujusmodi verò placita non pertinent ad dotem. Alia verò placita, quæ pertinent ad dominum feodi, placitare poterit in cū sua.

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plead pleas of this kind, except it be specially conceded to them, as, for instance, to the justiciaries of the lord the king, as a plea by a writ of right, a view of frank pledge, pleas of unlawful distrain, if a robber has to be judged, or if there has been a trespass against the assises of the lord the king ; but these kinds of pleas do not belong to dower. But other pleas, which belong to the lord of the fief, she may plead in his court.

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HENRICI DE BRACTON  
DE  
LEGIBUS & CONSUETUDINIBUS ANGLIÆ  
LIBER TERTIUS.

QUI DIVIDITUR IN DUOS TRACTATUS, QUORUM PRIMUS  
EST DE ACTIONBUS.

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f. 98 b.

CAP. I.

1.  
De actioni-  
bus, et quid  
sit actio.  
Instit. iv. 6.  
Azo p.  
1118.

Dictum est suprâ de personis, & rebus, nunc autem dicendum est de actionibus, & videndum quid sit actio, & unde oriatur, & qualiter dividatur, & qualiter proponatur, & intentetur, & qualiter proposita fundetur, & qualiter fundata probetur, & sciendum quid sit actio. Actio nihil aliud est, quàm jus prosequendi<sup>1</sup> in judicio, quod alicui debetur. Jus autem ponitur ad differentiam eorum, quæ non sunt juris, vel eorum, quæ quamvis jus habeant & actionem, elidi tamen poterunt per legitimam exceptionem contrapositam. Vel dicitur jus ad differentiam officii judicis, quod latissimum est & non est actio. Multa enim expediuntur per officium judicis, quæ non expediuntur jure actionis, & jus non est ipsum officium, sed appellari poterit factum. Sed si sit, qui quærat, cur dicatur quis prosequi per actio-

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<sup>1</sup> Azo employs the word "prosequendi," as used in the Institutes IV. 6.

THE THIRD BOOK  
OF  
HENRICUS DE BRACTON  
ON THE  
LAWS AND CUSTOMS OF ENGLAND,  
WHICH IS DIVIDED INTO TWO TREATISES, OF WHICH  
THE FIRST IS ABOUT ACTIONS.

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CHAPTER I.

f. 98 b.

We have treated above of persons and of things, we will now treat of actions, and we must see what an action is, and whence it arises, and how it is divided, and how it is propounded and intended; and how, after it has been propounded, it is founded; and how, after it has been founded, it is proved; and we must know what is an action. An action is nothing else, than the right of pursuing in court what is due to a person. And the term "right" is used to distinguish it from those things which have no element of right in them, or from those things which, although they partake of right and of an action, may be eluded by a legal demurrer taken to them. Or the term "right" is used to distinguish them from the office of the judge, which is most extensive and is not an action. For many things are settled by the office of the judge, which do not admit of settlement by a right of action, and a right is not an office itself but a plaint against an act. But if there be any one who asks, why is a person said to pursue by an action, when

2.  
Of actions,  
and what  
is an action.

nem, cùm proponat actionem injuriarum, cùm ibi ex officio judicis summa constituatur. Respondeo, benè poterit dici actio, cùm agitur ex injuria, & est ratio, quia habet querens jus querendi & petendi, si aliquid ei debetur. Si quæras quid, Respondeo, id videlicet, q querens æstimaverit. Nam antequam querens in + judicio conqueratur, æstimare non poterit injuriã sibi factam, s. quale damnum sustinuerit, ex qualitate facti & injuriæ enormitate, quæ quidem æstimatio, si injusta fuerit vel superflua, benè pmittitur judici ex officio suo summã quam querens æstimavit moderare & minuere, non autẽ augere, nisi fortè ita sit, quòd ille de quo queritur, gratis se posuerit in voluntatem & gratiam ipsi<sup>9</sup> conquerentis. Et quo casu æstimatio & taxatio erit in voluntate conquerentis, & aufertur judici officium & potestas taxandi. Item q dicitur, psequendi, hoc autem ponitur ad differentiam exceptionis, qua non psequimur alium, sed magis ab alio psequuti, nosmet ipsos defendimus, licèt in exceptione partes actoris sustineam<sup>9</sup>. Itẽ de eo, q dicit, in judicio, hoc etiam ponitur ad differentiam eorum, quæ non in judicio, sed extra psequimur, sicut furem nocturnum, vel diurnum, sicut prædonem vel alium, & non licebit unicuiq se sine judicio vindicare, hoc excepto, quòd si tales vivi capiantur, vita & mors et membrum ptinent ad regem. Item, q sibi debetur, ponitur ad differentiam criminalium actionum, quib<sup>9</sup> non solùm mihi debitum prosequor, sed cuilibet de populo, propter pacem regis & communem utilitatem

f. 99.



he propounds an action for injury, since the sum is in that case fixed by the office of the judge, I answer, it may well be called an action, when an injury is treated of, and there is reason, because the plaintiff has the right of complaining and claiming, if something is not due to him. If you ask what is that something, I answer, that forsooth, which the plaintiff has estimated. For before the plaintiff complains in court, he cannot estimate the injury done to him, that is, what damage he has sustained, from the character of the act and the enormity of the injury, which estimate, if it shall be unjust or excessive, the judge is wisely allowed from his office to modify and diminish the sum which the plaintiff has estimated, but not to increase it, unless it happen that the person, against whom the plaint is brought, places himself gratuitously at the will and grace of the plaintiff himself. In which case the estimate and taxing will be at the discretion of the plaintiff, and the duty and power of taxing is withdrawn from the judge. Likewise when it is said [the right] of "pursuing," this term is used to distinguish it from a demurrer, by which we do not pursue another, but rather when pursued by another, we defend ourselves, although in demurring we sustain the part of a plaintiff. Likewise as regards the words "in court," they are used to distinguish an action from those things, which we do not pursue in court but out of court, like a thief by night or by day, like a robber or another, and where it will not be allowed to every one to avenge himself without a judicial inquiry, with this exception, that if such persons are captured alive, their life and death and members pertain to the king. Likewise the words, "what is due to himself," are used to mark the difference from criminal actions, by which I pursue not merely what is due to me, but to any of the people, on account of the king's peace and the common interest. f. 99.

2.  
Unde actio  
oriatur.  
Inst. III.,  
14.  
Britton,  
l. i. ch.  
xxix. § 2.  
Fleta 120.

Videndum est etiam unde actio oriatur? et sciendū est q ex obligationib<sup>9</sup> præcedentib<sup>9</sup>, tanquā à matre filia.<sup>1</sup> Obligatio autē, quæ est mater actionis, originem ducit & initium ex aliqua causa præcedente, sive ex cōtractu vel quasi, sive ex maleficio vel quasi. Ex cōtractu verò oriri poterit multis modis, sicut ex conventionē, p interrogationes & responsiones, ex conceptione verborum, quæ voluntates duorum in unum trahit cōsensum, sicut sunt pacta, conventa, quæ nuda sunt aliquando, aliquando vestita, quæ si nuda fuerint, exinde non sequet actio, quia ex nudo pacto non nascitur actio. Oportet igitur q habeat vestiūta, de quib<sup>9</sup> inferiūs dicendū est, et hujusmodi causa ex cōtractu, vel quasi, semper erit civilis. Itē nascitur obligatio ex maleficio, vel quasi, & maleficiū pvenit ex delicto & injuria, quæ quidem plures sub se continet species: ut si quis crimen læsæ majestatis commiserit, homicidium, vel furtum, et hujusmodi: vel quasi ex maleficio, ut si judex scienter malè judicaverit, obligatus esse videtur quasi ex delicto, sed quia nec præcisè ex maleficio nec ex cōtractu obligat<sup>9</sup> est, & aliquid peccasse intelligitur licet per imperitiā, idè videtur quasi ex malificio teneri.

## CAP. II.

1.  
Quid sit  
obligatio,  
et qualiter  
contrahitur.

Quum autem nascentur actiones ex obligationibus, quæ ex contractu, vel quasi, substantiam capiunt, & etiam ex maleficio vel quasi, videndum est in primis quid sit obligatio, et qualiter cōtrahatur, et p quæ verba, et p quas psonas acquiritur obligatio, & qualiter dissolvatur & tollatur, & qualiter cū fuerit dissoluta

<sup>1</sup> Bracton seems to have borrowed his comparison from Azo, who says, "Sed quia actiones nascuntur ex obligationibus, et de obligationibus,

tanquam de matribus earum, primo loquamur." Summa in Inst., p. 1101.

We must see likewise whence an action arises, and it is to be known that it arises from preceding obligations like a daughter from a mother. But an obligation, which is the mother of an action, derives its origin and commencement from some preceding cause, either from a contract or a quasi-contract, or a tort or a quasi-tort. But it may arise in many ways from a contract, as from a covenant, by questions and answers, from a form of words, which draw together the will of two parties to one consent, as are pacts, conventions, which are sometimes nude, sometimes clothed; which if they were nude, an action would not thereupon follow, for an action does not arise from a naked fact. It is necessary therefore that it should have some clothing, respecting which we will treat below, and this kind of cause arising from contract or quasi-contract, will always be civil. Likewise an obligation arises from a tort or a quasi-tort, and a tort proceeds upon a delict and an injury, which contains many species under it, as if a person should commit the crime of treason, homicide, or theft, or such like, or from quasi-tort, as if a judge should knowingly judge badly, he seems to be under an obligation as it were from a delict, but because he is not obliged precisely from a contract or from a tort, and he is understood to have committed a fault from inexperience, he seems to be liable as it were from a tort.

2.  
Whence it  
arises.

## CHAPTER II.

Since, however, actions arise out of obligations, which derive their substance from contract, or from quasi-contract, and likewise from tort or from quasi-tort, we must consider in the first place what is an obligation, and how it is contracted, and through what words and through what persons an obligation is acquired, and in what way it is dissolved and got rid of, and in what way

1.  
What is an  
obligation,  
and how  
it is con-  
tracted.

Inst. III.  
14.  
Azo, p.  
1,101.

renovetur, & qualiter in aliam psonam transfundatur, & qualiter una obligatio in aliam mutetur. Et primò sciendum, quòd obligatio est juris vinculum, quo necessitate astringimur ad aliquid dandum vel faciendū, ut si quis ligatus fuerit & astrictus alicui ad aliquid, & ille aliàs ei ad aliud contra obligatus. Est enim obligatio, quasi contra ligatio, & quatuor habet species, quibus contrahitur, & plura vestiimta. Cōtrahit enim re, verbis, scripto, consensu, traditione, junctura, quæ oīa dicunt vestiimta pactorū. Re autē contrahitur obligatio, veluti in mutui datione, quæ cōsistit in reb<sup>o</sup>, q̄ pondere, numero, mensura sunt: pondere, sicut in reb<sup>o</sup> quæ ponderant: numero, sicut pecunia numerata, pōdere,<sup>1</sup> ære, argēto, & auro: mēsurā sicut in vino, oleo, frumēto. Quæ res autē in appendendo, numerando, metiēdo in hoc datur, ut statim fiant accipientiū, q̄a mutuū p̄priē dicitur id q̄ ex meo fit tuū, & quandoq̄ non eadē res, sed aliæ ejusdē naturæ reddūtur creditori. Hiis autē, cui res aliqua utenda datur, re obligatur q̄ cōmodata est, sed magna differētia est in mutuū & cōmodatū, q̄a is qui rem cōmodatam<sup>2</sup> accipit,<sup>3</sup> ad ipsam restituendam tenetur, vel ejus preciū, si fortē incendio, ruina, naufragio, aut latronum vel hostium incursu, consumpta fuerit vel deperdita, subtracta, vel ablata. Et qui rem utendam accipit, non sufficit ad rei custodiam, quòd talem diligentiam adhibeat, qualem suis rebus p̄priis adhibere solet, si alius eam diligentius potuit custodire. Ad vim autem ma-

f. 99 b.

Inst. III.  
15, § 2.  
Fleta ii.  
56, § 5.

<sup>1</sup> "Pondere." This word seems to be redundant, but it occurs in the oldest MSS.

<sup>2</sup> "Commodatam." This is the reading of the oldest MSS.

<sup>3</sup> Coggs v. Bernard. Lord Raymond's Reports, 915, 916. Holt, Chief Justice, cites this passage as "quia is qui rem mutuum accipit."

after it has been dissolved it may be renewed, and how it may be transferred to another party, and how one obligation may be changed into another. And it must be known, in the first place, that an obligation is a bond of law, by which we are constrained by a necessity to give or to do something, as if one was tied and constrained to another person for a certain thing, and that other person was bound to him on the contrary for another thing. For an obligation is as it were a counter-tie, and it has four forms under which it is contracted, and several vestments. For it is contracted in substance, in words, in writing, by consent, by delivery, by joining, all of which are called the vestments of compacts. An obligation is contracted in substance, as in granting a loan, which consists in things, which exist in weight, number, or measure: in weight, as in things which are weighed; in number, as in money counted of weight, brass, silver, or gold; in measure, as in wine, oil, or corn. Which things also by weighing, or by counting, or by measuring are given for this purpose, that they forthwith become the property of the receivers, because that which becomes *tuum* instead of *meum* is properly called *mutuum*, and sometimes not the same things, but others of the same nature are returned to the creditor. But he to whom a thing is given to be used, is obliged in substance when it is lent to him, but there is a great difference between a loan on mutuality and a loan on accommodation, that he who accepts a thing by way of accommodation is bound to return the identical thing or its value, if by chance it has been consumed or lost, or subtracted, or carried away by fire or by tumbling down, or by shipwreck, or by an incursion of robbers or of enemies. And he who has received a thing to be used, it is not sufficient for the safe custody of the thing, that he should apply such diligence as he is accustomed to apply to his own property, if another could have guarded it better. But as regards "force

f. 99 b.

jorem, vel casus fortuitos non tenetur quis, nisi culpa sua intervenerit, ut si rem sibi commodatam domi secum detulerit, cū peregrè pfectus fuerit, & illam incursu hostium, vel prædonum, vel naufragio amiserit, non est dubium, quin ad rei restitutionem teneatur.<sup>1</sup> Commodata autem res dicitur ad cōmodum data, & ppiè dicitur commodata, cū nulla mercede accepta res utēda datur. Gratuitum enim esse debet cōmodatum, & si merces intervenerit, potiùs dici debeat locatio & cōductio quàm commodatum. Is, apud quem res deponitur, re obligatur, & de ea re quam accepit restituenda tenetur, & etiam ad id, si quid in re deposita dolo commiserit. Culpæ autem nomine non tenetur, s. desidie vel negligentie, quia qui negligenti amico rem custodiendam tradit, sibi ipsi, & ppiæ fatuitati, hoc debet imputare. Creditor, qui pignus accepit, re obligatur & ad illam restituendam tenetur, & cū hujusmodi res in pignus data sit utriusq, gratia, s. debitoris quò magis ei pecunia crederetur data sit, & creditoris, quò magis ei in tuto sit creditum, sufficit ad illi<sup>9</sup> rei custodiā diligentia exactam adhibere, quam si præstiterit, & rem casu amiserit, securus esse possit, nec impediatur creditum petere.

Glanville,  
x. 13.

2.  
Quid est  
stipulatio.  
Britton,  
l. i. ch.  
xxiv., § 4.

Verbis contrahitur obligatio p stipulationem, est enim stipulatio quædam verborum conceptio, quæ consistit ex interrogatione & responsione, ut si dicatur, promittis? promitto. Dabis? dabo. Facies? faciā. Fidejubes? fidejubeo. Et omnis talis stipulatio, aut fit

<sup>1</sup> This paragraph is almost copied literatim from the Institutes of Justinian, l. iii. lib. xv. § 2.

majeur" or fortuitous accidents, a person is not responsible, unless his own fault has intervened, as if he carried about with him when he travelled abroad a thing lent to him in his house, and he lost it by an attack of enemies or of robbers, or by shipwreck, there is no doubt that he would be bound to make good the thing. But a thing is said to be lent on accommodation when its use is granted for the benefit of another, and it is properly called an accommodation, when its use is granted without any payment. For an accommodation ought to be gratuitous, and if a payment for the use should intervene, it ought rather to be styled a letting and a hiring, than an accommodation. He, with whom the thing is deposited, is in substance obliged, and is bound to return that very thing which he has received, and also for anything which may have been done by way of deceit with the thing deposited with him. But he is not responsible on the ground of fault, namely, of carelessness or of negligence, for he, who trusts a thing to a negligent friend to guard for him, ought to impute any loss to himself and his own folly. A creditor, who has received a pledge, is in substance obliged and is bound to return it; and since a thing of this kind given in pledge is given in the interest of either party, for instance, of the debtor in order that money may be entrusted to him, and of the creditor that he may entrust his money safely, it is sufficient for the custody of such a thing that exact diligence should be applied, which if the creditor has applied, and has lost the thing by a casualty, he may be secure, and not be barred from seeking to recover the thing entrusted.

An obligation is contracted verbally by a stipulation, for a stipulation is a form of words, which consists of a question and an answer, as if it should be said, Do you promise? I promise. Will you give? I will give. Will you do it? I will do it. Do you pledge yourself?

2.  
What is a stipulation.

Inst. III.,  
16, § 2.

purè, aut in diem, aut sub conditione: purè, ut si dicatur, tantam pecuniam dare spondes? sine aliqua adjectione diei vel conditionis, pecunia illa statim peti poterit. Sed si dies adjiciatur, quo solvi debeat, statim debetur, sed peti non poterit ante diem, nec etiam eo die, quia totus is dies relinquitur arbitrio solventis, nec verò certum erit eo die solutum non esse, priusquam dies præterierit, nec eodem modo rectè petet quis, si quis hoc anno, vel mense, dare stipulat<sup>9</sup> est, nisi omnibus partibus præteritis anni vel mensis. Eodem modo, si quis hominem vel fundum stipulatus fuerit, non rectè petet, antequàm tantum spacium præterierit, quòd tradi possit.

3.  
Si fiat  
stipulatio  
sub con-  
ditione.

ib. § 5.

Fit aliquando sub conditione, ut si dicatur, si Titius consul factus fuerit, tantam pecuniam dare spondes. Et notandum, quòd in conditionali stipulatione tantum spes concipitur, & conditiones, quæ ad præteritum vel ad præsens tempus referuntur, aut statim infirmant obligationem, aut omnino non differunt, ut si dicatur, si talis vixerit, vel consul factus fuerit dare spondes, nam si ita non fuerit, nihil valet. Si autem res ita se habeant, statim valet, quia ea quæ p rerum naturam certa sunt, statim non viciant obligationem, quamvis apud nos incerta fuerint.

4.  
Facta in  
stipulationibus  
deducuntur.

Facta autem in stipulationibus deducuntur, ut si facta fuerit stipulatio, aliquid fieri, vel non fieri, quo casu optimum erit poenam adjicere, ne quantitas stipulationis sit in incerto, vel necessesit actori probare, quid ejus intersit, & tali modo adjiciatur poena. Et si



I do pledge myself. And every such stipulation is made either absolutely, or for a given day, or under a condition; absolutely, as if it be said, do you undertake to give so much money, without any addition of a day or a condition, that money may be demanded at once. But if a day be added on which it ought to be paid, it is due immediately, but it cannot be claimed before the day, nor even on that day, because the whole of that day is left to the choice of the payer, nor will it be certain that it has not been paid on that day until the day is past; nor in the same way will he claim it rightly, if he has stipulated to give it in this year or month, unless upon all the parts of the year or month being past. In the same manner, if any one has stipulated for a man or a farm, he will not rightly claim, unless so much space will have passed, that it may be delivered.

A stipulation is made sometimes under a condition,<sup>3.</sup> as if it be said, If Titius has been made consul, do you undertake to give so much money? And it is to be noted, that in a conditional stipulation hope only is conceived, and conditions, which have reference to the past or the present, either immediately invalidate the obligation or altogether are unimportant, as if it be said, Do you undertake to give, if such an one has lived or has been made consul? for if it be not so, it avails nothing. But if the things be so, it avails at once, for those things which by the nature of things are certain, do not vitiate forthwith the obligation, although they may have been uncertain in our minds.

Acts are also brought into stipulation, as if it be stipulated that something be done or not done, in which case it will be best to add the penalty, lest the quantity of the stipulation be uncertain, or it be necessary for the plaintiff to prove, what his interest is, and by such means a penalty be added. And if this be done or

3.  
If the stipulation be made under a condition.

4.  
Acts are brought into stipulation.

f. 100. hoc factum non fuerit vel non erit, tunc nomine poenæ  
 Britton, tantum dare spondes. Item si de una resenserit sti-  
 I. ch. xxix., pulator, & de alia pmissor, non valet, non magis quàm  
 § 6. si ad interrogatum non esset responsum. Item non  
 valet, si quis ita stipuletur, quòd quis homicidium  
 perpetret vel furtum vel hujusmodi.

5. Item loca deducuntur in stipulationem, ut si dicas,  
 Item loca in stipulationibus deducuntur.  
 Inst. III., 20, § 2. existens Oxoñ hodie Londoñ dare spondes: talis stipu-  
 ib. § 3. latio erit inutilis, nisi temp<sup>9</sup> adjiciatur, quo fieri pos-  
 sit id q̄ deducitur in stipulationem, quia omnino erit  
 impossibile, ac si quis rem pmitteret, quæ in rerum  
 natura non esset, vel esse non posset, vel si rem  
 sacram vel publicam, quæ non est in alicujus bonis.  
 ib. § 5. Item si quis stipulat<sup>9</sup> fuerit, qui alium daturū vel fac-  
 turū pmiserit quàm cum qui in potestate sua extiterit,  
 vel si quis ad ea quæ interrogat<sup>9</sup> fuerit non respon-  
 derit, nec secundum q̄ interrogat<sup>9</sup> fuerit, ut si quis  
 decem aureos dari stipuletur, & alius quinq̄ pmittat,  
 vel si unus purè, & alius sub cōditione, stipulatio non  
 ib. § 14. valebit. Item erit inutilis, si quis ita stipulatus fuerit:  
 si navis venerit de Asia hodie,<sup>1</sup> dare spondes. Quia  
 præpostere concepta est, tamen licèt præpostera fuerit,  
 non erit rejicienda. Item non valebit, si impossibilis  
 adjecta fuerit conditio, cui natura in impedimento  
 fuerit quòd existat. Veluti si dicat, si cœlum digito  
 tetigero, dare spondes: si autem sic, si cœlum digito  
 ib. § 11. non tetigero, tunc valet, quia purè facta est, & statim  
 peti poterit.

Judicialis autem esse poterit stipulatio, vel conven-  
 tionalis: judicialis, quæ jussu judicis fit vel prætoris.

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<sup>1</sup> "hodie." The condition is | dare spondes, inutilis erat stipulatio,  
 thus stated in the Institutes, "Si q̄ | quia præpostere concepta est."  
 navis [cras] ex Asia venerit, hodie

not done, do you then undertake to give so much in the name of a penalty? And if the stipulator has had one penalty in view, and the promiser another, it is not valid any more than if no answer had been given to the question. Likewise it is not valid, if any one should stipulate thus, that he would perpetrate a homicide or a theft or such like. f. 100.

Likewise places are brought into stipulation, as if you should say, being at Oxford to day, do you promise to give at London? such a stipulation will be useless, unless a time be added in which the thing brought into stipulation may be done, for it will be altogether impossible, as if a person should promise a thing which is not in the nature of things, or cannot be, if he should promise a thing which is sacred or public, which is not amongst any one's property. Likewise if any one has stipulated, who has promised that another will give or do, than he who is in his own power, or if he has not answered to the interrogatory nor according to the interrogatory, as if a person stipulates that ten gold pieces be given, and the other promises five, or if one absolutely and the other conditionally, the stipulation will not be valid. Likewise it will be useless if a person should thus stipulate, If a ship shall come from Asia to-day, do you undertake to give. Because it is a preposterous conception, nevertheless although it be preposterous, it is not to be rejected. Likewise it will not be valid, if an impossible condition be added, to which nature is an impediment that it should exist. As if he should say, If I shall touch the sky with my finger, do you undertake to give, but if he should say thus, If I shall not touch the sky with my finger, then it is valid, because it is made absolutely, and may be forthwith claimed. 5.  
Places also  
brought  
into stipu-  
lation.

But a stipulation may be judicial or conventional, judicial, if it is made by order of the judge or of the

6.  
Quid sit  
judicialis  
stipulatio.  
Inst. III.,  
19, § 3.  
Azo ad  
Inst.

Cōventionalis, quæ ex conventionē utriusq, partis concipitur, nec jussu judicis vel prætoris, & quarum totidem sunt genera, quot pœnæ rerum contrahendarum, de quib<sup>9</sup> omnib<sup>9</sup> omnino curia regis se non intromittit, nisi aliquando de gratia.

7.  
Si res  
plures in  
stipulationem  
deducuntur.

Si cum res plures in stipulationem deducantur, pmissor simpliciter respondeat, sic dare spondeo, ppter omnes tenetur. Et si unam rem tantum ex pluribus se daturum pmiserit, vel quasdam, obligatio in iis contrahitur p quibus responderit. Ex plurib<sup>9</sup> enim stipulationibus, una vel quædam videntur esse perfectæ, & cum plures sint res, ad singulas respondere debet.

8.  
Quis non  
possit  
stipulari.  
Inst. III.,  
20, § 7.

In fine autem videndum, quis non possit stipulari nec pmittere, ut sciri poterit quis possit stipulari: & sciendum q mutus nec stipulari potest nec promittere, cum loqui non possit, nec verba stipulationi congruentia proferre, quod quidem in surdo exceptum est, quia is qui stipulatur, verba pmittentis, & is qui pmittit, verba stipulantis audire oportet, nisi sit qui dicat, q hoc facere possunt p nutus, vel p scripturam. Nec dicitur hoc de eo qui tardiùs audit, sed de eo qui non omnino exaudit. Et q p scripturā fieri possit stipulatio & obligatio videtur, quia si scriptum fuerit in instrumto aliquem pmisisse, pinde habetur, ac si interrogatione præcedente responsum sit. Furiosus autem stipulari non potest, nec aliquod negotium agere, quia non intelligit quid agit. Eodem modo nec infans, vel qui infanti pximus est, & qui multū à furioso non distat, nisi hoc fiat ad cōmodū suū & cū tutoris autoritate.

prætor. Conventional, which is drawn up on the agree-<sup>6.</sup> ment of each party, and not by the order of the judge <sup>What is a judicial stipulation.</sup> or of the prætor, and of which there are as many kinds, as there are penalties for contracts, with which the Court of the King does not interfere, except as a matter of grace.

If when several things are brought into a<sup>7.</sup> stipulation, the promiser simply answers, I undertake to give, he is bound on account of all. And if he under-<sup>If several things are brought into a stipulation.</sup> takes, that he will give one only out of many, or certain of them, an obligation is contracted on those for which he has answered. For out of several stipulations one or more of them seems to be perfect, and when there are several things, he ought to answer for each.

But we must see finally, who cannot stipulate nor<sup>8.</sup> promise, that it may be known who can stipulate: and it <sup>Who cannot stipulate.</sup> is to be known that a dumb man can neither stipulate nor promise, since he cannot speak nor utter words suitable to a stipulation, which in a deaf man is excepted, because he who stipulates ought to hear the words of the party promising, and he who promises ought to hear the words of the party stipulating, unless there be some one who says, that they may do this by nods or by writing. Nor is this said of him who is slow of hearing, but of him who does not hear at all. And it seems that a stipulation and an obligation ought to be made by writing, because if it be written in an instrument that some one has promised, it is held the same, as if an answer had been made upon a preceding interrogation. But a madman cannot stipulate, nor do any business, because he does not understand what he is doing. In the same way neither an infant nor one who is next to an infant or who does not differ much from a madman, unless this be done for his own advantage and with the authority of a tutor.

9.  
Causæ,  
quare  
fuerunt  
inventæ  
stipula-  
tiones et  
obliga-  
tiones.  
f. 100 b.

Inst. III.,  
20, § 19.

Invētæ autē sunt hñodi stipulationes & obligationes, & hoc,<sup>1</sup> quòd unusquisq, habeat & sibi acquirat, q suā interest, si contra ea agat quæ in stipulationē dedu-  
cuntur. Et si res in stipulatione deducta alii detur, nihilominus intererit stipulatoris, quia ille qui p̄misit, tenebitur ad interesse, vel ad p̄nam si p̄na fuerit in stipulationē deducta. Per scripturā verò obligatur quis, ut si quis scripserit alicui se debere, sive pecunia numerata sit, sive non, obligatur ex scriptura, nec habebit exceptionem pecuniæ non numeratæ contra scripturam, quia scripsit se debere, & non solum obligatur quis p̄ verba, sed p̄ scripturam, & p̄ literas, non ut literæ quidem ipsæ vel figura literarum obliget, sed oratio significativa quam exprimunt literæ, sed utrumq, cooperatur ad obligationem, oratio significativa simul cum litera. Contrahitur etiam obligatio non solum scripto & verbis, sed & consensu, sicut in contractibus bonæ fidei, ut in emptionibus, venditionib<sup>2</sup>, locationib<sup>2</sup>, conductionib<sup>2</sup>, societatib<sup>2</sup>, et mandatis, et ideò dicuntur obligationes hujusmodi cōtrahi ex consensu, quia nec scriptura, nec præsentia semper est necessaria. Et notandum,<sup>2</sup> quod in his contractibus nominatis, uterq, obligatur alteri, s. in mutuo vel in literarum obligatione & aliis casib<sup>2</sup> pluribus, sicut in commodato & deposito & aliis hujusmodi. Et si non à principio, tamen postea potest uterq, incipere alteri obligari, vel ratione expensarum et hujusmodi.

Inst. III.,  
22.

ib. 23.

10.  
De obliga-  
tionibus,  
quæ nas-  
cuntur

Dictum est suprā de obligationibus quæ nascuntur ex contractu, nunc autem dicendum est de obligationib<sup>2</sup> quæ nascuntur quasi ex contractu. Et sciendum, q quasi ex contractu nascuntur actiones, sicut negotiorum

<sup>1</sup> "Et hoc." "Ad hoc" is the original reading of Bracton's text, reading of MS. Rawl. C. 160. as in MS. Rawl. C. 160.

<sup>2</sup> "Et notandum." This is the

But these kinds of stipulations and obligations have been invented, that each may have and acquire for himself what interests himself, if he acts contrary to what has been brought under the stipulation. And if the thing made subject to the stipulation is given to another, it will nevertheless interest the stipulator, for he, who has promised, will be bound to the amount of his interest, or for the penalty, if a penalty has been brought under the stipulation. But a person is obliged by a writing, as if a person shall write that he owes money to another, whether the money has been paid to him or not, he is bound by the writing, nor can he object that the money has not been paid in the face of the writing, because he has written that he owes it, and a person is obliged not only by words but by writing and by letters, not that the letters themselves or the figures of the letters oblige him, but the significative language which the letters express, but each co-operates to the obligation, the significative language together with the letters. An obligation likewise is contracted not only in writing and in words but also by consent, as in contracts of good faith, as in buying and selling, in letting and in hiring, in partnerships, and in agencies, and obligations of this kind are said to be contracted from consent, because neither writing nor presence is always necessary. And it is to be noted that in these named contracts each is bound to the other, that is in a loan or in the obligation of a writing, and in other various cases, as in a case where a thing is lent or deposited or such like. And if at the commencement, nevertheless afterwards each may be bound to the other by reason of the expenses or otherwise.

9.  
The causes, why stipulations and obligations have been invented.

f. 100 b.

We have spoken above of obligations which arise from a contract, we must now, however, speak of obligations which arise as it were from a contract. And it is to be known that actions arise as it were from a contract, as in matters of agency, wardship, the division of common

10.  
Of obligations, which arise as it were from a contract.

quasi ex gestorum, tutelæ, communi dividundo, familiæ herciscundæ, actio ex testamto, condictio indebiti, & hujusmodi.

11. De traditione fiat, ut suprâ in titulo de donationibus. *De traditione et junctura.* Junctura, ut si plura pacta de eadem re deducantur in stipulationē, possunt plura pacta in stipulationem deduci, sicut plures res, & si incontinenti adjiciantur etiam in initio contractus, insunt contractibus, & legem dant eisdem, & contractus informant. Si autem ex intervallo non sit,<sup>1</sup> ut si primò pactum intervenerit ne peteret, & postea de eadem re ut peteret, primū pactū p posterius eliditur, non quidem ipso jure, sed opere exceptionis.

12. Videndum etiam est p quas psonas acquiratur obligatio, & sciendum, quòd p pcuratores, & p liberos, quos sub potestate nostra habem<sup>2</sup>, & p nosmet ipsos, & filios nostros, & p liberos homines servientes nostros, ex duabus causis, s. ex operibus suis & re nostra, acquiritur obligatio: item p servos pprios vel communes, vel in quibus usum fructum habemus, vel alios, quos bona fide possidemus, dum tamen nomine nostro fuerint stipulati.

3. Videndum etiam quibus modis tollitur obligatio, & sciendum, quòd tollitur quandoq, p exceptionem multipliciter, ut si quis petat, & alius doceat se solvisse. Item ratione pacti, ut si priùs convenit ut peteret, postea ne peteret. Item per exceptionem doli, vel metus, ut si exorta fuerit obligatio per dolum vel per metum. Item per exceptionem rei judicatæ, ut si per judicium recessum sit ab obligatione. Item per exceptionem jurisjurandi, cùm delatum fuerit jusjurandum

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<sup>1</sup> "Non sit." This is the reading of the oldest MSS.



property, the distribution of an inheritance, an action arising out of a testament, a suit to recover a sum paid, and not due, and such like.

Respecting delivery, let it be done as above in the title respecting donations. By joining, as if several 11. Of delivery and joining. pacts on the same matter are brought under a stipulation. Several pacts may be brought under a stipulation like several things, and if they are forthwith added even at the beginning of a contract, they are included in the contract and give a legal character to it, and give form to the contract. But if it be not after an interval, as if at first a pact has intervened not to sue, and afterwards in the same matter to sue, the first pact is rendered nugatory by the second, not by operation of law but by means of exception.

We must also see by what persons an obligation is 12. By what persons an obligation is acquired. acquired, and it is to be known that an obligation is acquired through agents, and through children whom we have under our authority, and through ourselves, and through our sons and, through free men our servants from two causes, namely their work and our substance; likewise through our own or through common serfs, or through others of whom we have the usufruct, or others whom we possess in good faith, provided only they have stipulated in our name.

We must see also in what ways an obligation is got 13. In what ways an obligation is got rid of. rid of, and it is to be known that it is got rid of sometimes by an exception in various ways, as if a person should claim, and another show that he has discharged it. Likewise by reason of a pact, as if it has been first agreed upon that he should sue, and afterwards that he should not sue. Likewise by an exception of deceit or of fear, as if the obligation has arisen through deceit or through fear. Likewise by an exception of a judgment, as if by a judgment the obligation has been renounced. Likewise by an exception of an oath, when an oath has

vel relatū & postea juratum. Item p exceptionem præscriptionis ppter defectum probationis, quia sicut tempus est modus inducendæ obligationis, ita & tollendæ per dissimulationem & negligentiam, & per consequens actionis quæ sub certis temporibus limitatur, currit enim tempus contra desides & sui juris contēptores. Itē tollitur morte alterius contrahentium, vel utriusq, maximè si fuerit pœnalis, vel simplex, si autem duplex, sc. pœnalis & rei psequutoria,<sup>1</sup> in hoc q pœnalis est tollitur, & non extenditur contra hæredes, nec datur heredib<sup>2</sup>, quia pœna tenet suos authores, & extinguitur cū psona. Itē tollitur cū sic sit extincta, quodd nulla remaneant ejus reliquiæ, sicut p veram solutionem, quia soluto eo q debetur, omīs tollitur obligatio, sive ipse solvat qui debeat, sive alius pro eo, sive debitore sciente, sive ignorante, & eo etiā invito. Item si reus solverit, fidejussor liberatur, & è contrario. Item per acceptilationem, quæ dicitur imaginaria solutio, ut si dicatur: Omne quod tibi debui ex quacunque causa habesne acceptum? & respondeatur, vel scribatur, habeo, acceptumque fero. Et in partem debiti poterit acceptilatio fieri, sicut in toto, & possunt omīs res, quæ aliqua ratione in stipulatione deducuntur, tolli per acceptilationem, & eodem modo quo tolluntur per acceptilationem obligationes, ita poterunt renovari, & deduci in aliam obligationem plures & unam, ut si pro pluribus debitis, causis, & obligationibus, promittatur certa summa pecuniæ. Item per novationem, ut si transfusa sit obligatio de una persona in aliam, q̄ in se suscepit obligationem. Intervētu enim novæ psonæ nova nascitur obligatio, &

f. 101.

Inst. III.,  
30. § 1.Inst. III.,  
30 § 3.

<sup>1</sup> "Maxime, si fuerit pœnalis et rei persecutoria." MS. Rawl. C. 160.

been tendered, and it has been refused and afterwards sworn. Likewise by an exception of a prescription on account of defect of proof, because as time is a mode of bringing in an objection, so it is a mode of getting rid of it through dissimulation and negligence, and by consequence of an action which is limited under certain times, for time runs against the indolent and those who are careless of their right. Likewise it is got rid of by the death of either of the contracting parties or of both, especially if it is a penal obligation or a simple one, but if it be a double one, namely penal and for recovery, it is got rid of as far as it is penal and does not extend to the heirs, nor is it allowed to the heirs, because a penalty binds the original parties and is extinguished with the person. Likewise it is got rid of, when it is so extinguished that no relics of it remain, as by a true payment, because upon payment of that which is due, all the obligation is removed, whether he, who owes, pays, or another for him, whether with the knowledge of the debtor or with his ignorance, and even if against his will. Likewise if the principal is released, the surety is released, and on the contrary. Likewise by acceptilation, which is the name of an imaginary discharge, as if it should be said, Do you hold to have been received by you whatever I owe to you from whatever cause, and it be answered or written, I [so] hold, and regard it as received. And an acceptilation may be made for a part of a debt, as for the whole, and all things, which by any means are brought under a stipulation, may be got rid of by an acceptilation, and in the same manner, in which obligations are got rid of by an acceptilation. so they may be renewed and be brought under another obligation either one or more, as if for several debts, suits, and obligations a certain sum of money is promised. Likewise by novation, as if the obligation has been transferred from one person unto another, which has taken upon itself the obligation. For by the intervention of a new person a new obligation

f. 101.

prima tollitur, sicut de constituta, ut si quis in se susceperit alterius obligationem. Item si ab una persona transfusa sit in aliam, quæ obligari non possit, amittitur, ut si in personā minoris à persona majoris. Item in novatione intervenire poterit fidejussor & poena. Item sub conditione, ut si secundus benè solverit, alioquin durat prima. Item p confusionem, ut si massa confusa fuerit cum alia, ita quòd non appareat. Item p interiù rei & speciei. Itē solutione, tamen notand' q p̄dicta vera sunt, si corporale erat, quod deduct' fuit in obligationem: si autem incorporale, sicut servitus, vel aliud jus quod est incorporale, non poterit inde fieri solutio, cū res incorporalis traditionem non patitur. Videtur tamen quasi traditionem fieri, per contidianam patientiam, & p usum. Et in summa notandum, quòd eisdem modis dissolvitur obligatio, quæ nascitur ex contractu vel quasi, quibus contrahitur. Re, ut si res petenti restituatur: verbis, ut si fiat in contrarium, & contrariis verbis. Scripto, ut si cōscripserim me debere, scribat creditor se accepisse. Consensu, ut si communiter consensum fuerit ex utraq parte, recedatur à contractu p communem dissensum utriusq, & non alterius tant. Traditione, ut si res tradita retradatur. Junctura, ut si fiat contrarium.

Oriuntur  
obliga-  
tiones ex  
delicto vel  
quasi.

Oriuntur etiam obligationes ex delicto vel quasi, ex maleficio vel quasi: delicta verò, & maleficia, ex dictis & factis p̄cedentibus, q̄ quidem distingui debent quo animo fiant, & qua voluntate, voluntas enim & pposi-

arises, and the first is got rid of as it were by arrangement, as if a person has taken upon himself the obligation of another. Likewise if it be transferred from one person to another, which cannot be a subject of obligation, it is lost, as if it be transferred to the person of a minor from the person of one, who has attained majority. Likewise in a novation a surety and a penalty may intervene. Likewise under a condition, as if the second shall well discharge it, otherwise the first continues. Likewise by confusion, as if a mass is confused with another mass, so that it is not apparent. Likewise by the perishing of the thing and of the species. Likewise by the discharge of it, nevertheless it is to be noted that the aforesaid things are true, if it be a corporeal substance, which has been brought under an obligation: but if it be incorporeal like a servitude or another right, which is incorporeal, a discharge of it cannot be in that manner effected, since an incorporeal thing does not admit of transfer. It seems however that a kind of transfer takes place, by daily sufferance and by use. And in sum it is to be noted, that an obligation, which arises from a contract or a quasi-contract, is dissolved in the same ways in which it is contracted. In reality, as if the thing be restored to the claimant: in words, if it be done to the contrary and in contrary words. In writing, as if I have written that I owe it, and the creditor writes in return that he has received it. By consent, as if it has been consented in common on both sides, and the contract is abandoned by a common dissent of both parties, and not of one only of them. By delivery, as if the thing delivered has been delivered back.

Obligations arise from a delict or quasi-delict, or from a malicious act or a quasi-malicious act: but delicts and malicious acts arise from preceding sayings and doings: which ought to be distinguished according to the intention with which they have been done, and the will with which they have been done, for the will and the purpose

14.  
Obligations arise from a delict or a quasi-delict.

tum distinguunt maleficia, secundum q inferiùs dicetur. Ex maleficiis autem pcedunt crimina majora vel minora, sicut crimē læsæ majestatis, homicidia, furta, & rapinæ, & alia plura de quibus inferi<sup>9</sup> dicetur. Itē quasi ex maleficio trāsgressionēs sive p̄sumptiones, ut si judex scienter malè judicaverit, & hujusmodi. Itē ex maleficio vel delicto pcedunt injuriæ & transgressiones. Injuria autē dici possit oīe illud, q non jure fit. Transgressio autem, cūm modus & mensura non  
 f. 101 b. servatur. Et in iis casibus, considerand est quo animo, quave voluntate quid fiat, in facto vel judicio, ut pinde sciri possit q sequatur actio, & q pœna. Tolle enim voluntatē, & erit oīs act<sup>9</sup> indifferens, quia affectio tua nomen iponit operi tuo, & crimen non cōtrahitur, nisi nocendi voluntas intercedat, nec furtum cōmittitur, nisi ex affectu furandi. In iis autē delictis sive maleficiis, obligatur ille qui delinquit, ei cōtra q delinquitur, nec dissolvitur obligatio quoad pœnā, nisi morte utriusq, vel alterius. Pœna verò non transgreditur psonā delinquentis, non enim debet pœnam sentire, qui in culpa non fuit, juxta illud :

“Pœna potest demi, culpa perennis erit.”

### CAP. III.

1.  
De prima  
divisione  
actionum.

Dict' est suprā quid sit actio, & qualiter de obligationib<sup>9</sup> oriatur: nūc autē vidend' qualiter dividatur. Et sciend', q oīiū actioī, sive placitoī (ut inde utatur æquivocè) hæc est prima divisio, q qdā sunt in rē, qdā in psonā & qdā mixtæ. Item eaf q sunt in psonā, alia criminalia, & alia civilia, secūd q descendunt ex

distinguish malicious acts, according as will be explained below. But from malice proceeds greater or minor crimes, as the crime of high treason, homicides, thefts, and robbery and other things, of which it will be treated below. Likewise as it were from malice [proceed] trespasses or presumptions, as if a judge has knowingly judged wrongly and such like. Likewise from malice or delict proceed wrongs and trespasses. But wrongs may be said to be all things, which are not in accordance with right. But trespasses, when manner and measure are not observed. Likewise in those cases, we must consider with what intention or with what will a thing is done, in fact and in law, that it may be known accordingly what action follows and what punishment. For take away the will, and every act will be indifferent, for your meaning imposes a name upon your act, and a crime is not committed unless a guilty intention intercede, nor is a theft committed unless with the intention to steal. But in those delicts or malicious acts, he who is the delinquent is under an obligation to him, against whom he has committed the delict, nor is the obligation dissolved as regards the punishment, except by the death of both or of one of them. But the punishment does not pass beyond the person of the delinquent, for he ought not to suffer a punishment, who is not in fault, according to the verse "The punishment may be taken away, the fault will be eternal."

f. 101 b.

## CHAPTER III.

It has been said above what is an action and in what ways it arises out of obligations : now we must see, in what way it is divided. And it is to be known that of all actions or pleas (to use these terms as equivalent) this is the first division, that some are real and others personal, and some are mixed. Further of those that are personal, some are criminal, others are civil, according

1.  
Of the first  
division of  
actions.

maleficiis vel cōtractib<sup>9</sup>. Item criminaliū, alia major, alia minor, alia maxima, secundū crimiñ .quantitatē. Sunt enī crimina majora, & dicuntur capitalia, eò q̄ ultimū inducunt suppliciū, vel truncationē mēbrorum, vel exiliū ppetuū, vel ad tēp<sup>9</sup>. Minora verò q̄ fustigationē inducunt, vel pœnā pillorā, vel tūborā, vel carceris inclusionē, quandoq̄ cū infamia, quandoq̄ sine, secund' q̄ fuerit talis aut talis. Ict<sup>9</sup> enī fustiū infamiā non irrogat, sed causa, ppter q̄ id plecti meruit. Item eaī q̄ sunt in psonā & q̄ ex delicto oriuntur, vel quasi, sicut actio injuriā, de qua civiliter agitur, q̄dam major est, & q̄dam minor. Est autem atrox injuria, & est levis, & secundū hoc sequitur pœna, major vel minor, juxta illud: "Quod tamen admissum, q̄ sit vindicta "docebo." Nec debet pœna ad alios extendi q̄ ad suos authores, nec ulteri<sup>9</sup> p̄gredi q̄ se extendit delict'. Item poterit injuria sub se continere transgressionē, ut si quid p̄sumatur contra statuta regis & regni, excedendo modū & mensurā, vel faciendo citra debiū, videlicet minus q̄ deberet, p malitiam & fraudem, negligentiam & omissionem. Item sunt actiones in personā civiles, quæ oriuntur ex contractu vel quasi, ut suprā dictum est. Viz. ubi quis alteri tenetur ad aliquid dand', vel faciend', ex aliqua causa p̄cedente. Et notād' <sup>1</sup> q̄ nulla actio civilis in psonā civilē criminaliter potest nec debet intētari, unde oportet q̄ judex in qualibet actione tali fact' & initiū diligēter examinet, & secundū hoc p̄cedat actio civiliter, & si utraq̄ pars voluerit criminaliter agere in civili, ut si quis actionē

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<sup>1</sup> "Et notandum." This is in accordance with the text of MS. Rawl. C. 160.



as they are derived from torts or from contracts. Further of criminal, some are greater, others are less, others are of the gravest kind, according to the magnitude of the crime. For some kinds of crimes are greater and are called capital, from the circumstance that they entail the most extreme punishment, or the loss of limbs, or exile either perpetual or temporal. But the minor crimes entail flogging or the punishment of the pillory or of the tumbrel or locking up in prison, sometimes with infamy, sometimes without, according as he has been such or such a person. For the blow of the rod does not inflict infamy, but the cause wherefore he has deserved to be punished. Further of those actions which are personal and which arise from a delict or as it were a delict, as an action for an injury, for which there is a civil action, some are greater, some are less. For an injury is severe or it is light, and accordingly a greater or less penalty attends it according to the verse, "I will teach you what is the penalty when the act has been admitted." Nor ought the punishment to extend to others than the authors of the act, nor advance further than the delinquency extends. Likewise an injury may contain within itself a trespass, as if any thing should be presumed against the statutes of the king or of the kingdom, by exceeding mode and measure, or by acting within what is due, that is in doing less than one ought, through malice and fraud, negligence or omission. Likewise there are civil actions against the person, which arise from a contract or a kind of contract, as above said, for instance where a person is bound to give something or to do something from some preceding cause. And it is to be noted, that no civil action against a civil person can or ought to be brought in a criminal form, wherefore the judge ought in every such action to examine carefully the fact and the origin, and accordingly the action should be by a civil procedure, and if either party wishes to proceed criminally in a civil matter, as if either party should institute an action criminally against a man,

fol. 102.

institueret contra aliū criminaliter cū sit civilis, & diceret, q p felonīā excussisset pulverē de capa sua, vel quid tale, & hoc paratus esset disrationare, iudex factum examinādo & causam, deberet pñunciare appellū esse nullū, & causam civilem, & nō criminalem. Et hoc, etiam si appellatus paratus esset p corp<sup>o</sup> suum defendere, & etiam si per imperitiam esset inter eos duellum vadiat, deberet devadiari per iudicium. Sed restat quærendum, utrum talis ulterius ad civilem actionem habere possit regressum, vel non. Cū autē actio fuerit merè criminalis, institui poterit ab initio criminaliter, vel civiliter, sed cū criminaliter, fuerit semel instituta civiliter, quæritur an accusans mutare possit & agere criminaliter, & è contrario. Dicunt quidam q à criminali descendere non poterit ad civilem minuendo, sed à civili ad criminalem augendo, quibuscum ego non assentior, cū in hoc casu admitti non deberet variatio.

2.  
Quæ sunt  
actiones  
personales.

Personales verò actiones sunt, quæ competunt contra aliquem ex contractu, vel quasi: ex maleficio, vel quasi: cū quis teneatur ad aliquid dandū, vel faciendū, & locum habent adversus eum qui contraxit, & hæredem suum, nisi fuit pœnalis, & dicuntur actiones nativæ, eò q nascuntur ex contractibus, & omnes ferè personales actiones sunt ex contractu, sicut mutui, commodati, depositi, mandati, ex empto, vendito, locato, & conducto. Personales verò actiones quæ nascuntur ex maleficio, aliæ persequuntur pœnā tantū, ut actio furti, aliæ verò persequuntur ipsam rem & pœnam, sicut actio vi bonorum raptorum, & ita sunt duplices, eò quòd sunt rei persequutoriæ, & pœnæ, & ita tam in rem, quàm in personam, & cū sint uno modo rei

when it is a civil action, and should say that he had feloniously shaken off the dust from his cloak and something of that sort, and should be ready to argue it, the judge upon examining the fact and the cause ought to pronounce the accusation to be null, the cause to be civil and not criminal. And this, even if the accused be ready to defend himself with his person, and even if sureties have been produced for a duel, the sureties for the duel should be dismissed judicially. But it remains to be inquired, whether such a person may have a further recourse to a civil action or not. But when an action is strictly criminal, it may be instituted from the commencement either criminally or civilly, but when a criminal action has been once instituted civilly, it is questioned whether the accuser can change and proceed criminally, and the converse. Some say that he cannot descend from a criminal to a civil action by diminution, but he may from a civil to a criminal by increasing, with whom I do not agree, since in this case variation ought not to be admitted.

Personal actions indeed are such as may be brought against any one upon a contract or something like a contract; upon a tort or something like a tort, when any one is bound to give or to do something, and they have a place against him who has made the contract and against his heir, unless there be a penalty, and they are called native actions, from the fact that they are born out of contracts, and almost all personal actions arise out of a contract, such as a borrowing, a lending, a deposit, a mandate, a purchase, a sale, a letting, a hiring. But personal actions, which arise out of a tort, some sue for a penalty only, as an action for theft, but others sue for the thing itself and for a penalty, as an action for robbery, and so they are double, in the circumstance that they sue for the thing itself and the penalty, and thus they are actions for a thing and actions against a person, and since they are in one sense suits for a thing, they may

2.  
What are  
personal  
actions.

persequutoriaë, competunt contra omnes qui possunt restituere, sive ille possideat qui spoliavit, sive alius. Secundùm verò quòd fuerint pœnales, non persequuntur nisi tantùm authores delicti, & quandoq; competunt versus unum qui deliquit, cùm possit restituere, cùm sint conjunctæ in una psona, & quandoq; versus duos, vel plures, cū sint disjunctæ, & bifurcatæ, cùm ille qui deliquit, non possideat, nec restituere possit, nec ille qui possidet non deliquerit, sed restituere possit. Item illarū q̄ sunt in personā ex maleficio, vel quasi: quædam sunt criminales & q̄dam civiles. Criminalium quædam majores, q̄dam minores, & civilium eodem modo, secundùm quod superius in parte tangitur.

3.  
Quæ sunt  
actiones in  
rem, de re  
immobili.

Actiones verò in rem sunt, quæ dantur contra possidentem, qui nomine proprio possideat ex quacunque causa, & non alieno, quia habet rē, vel possidet q̄ restituere possit, vel dñm nominare: ut si quis petat ab alio rem certā, fund' aliquem, vel terram, & se contendat habere jus & inde esse dominum, & persequatur rem illam, & non ejus precium, nec ejus æstimationem, nec tantumdem quod sit ejusdem generis, & sic res corporalis immobilis, quæ petitur ex quacunque causa versus aliquem, qui nullo jure personali obligatus est. Et per hoc quod petens, rem petitam intendens esse suam, actionem instituerit versus tenentem, & tenens negaverit, in rem erit actio, sive placitum, & hoc sive proprio nomine petat, sive ratione rei, quam ipse possidet, sicut viri religiosi vel rectores nomine ecclesiarum suarum, vel alii nomine alicujus universitatis sicut in rem communem, & hoc etiā sive principaliter

be brought against all persons who can restore it, whether he who spoiled it possesses it, or another person. But according as they are penal, they do not sue any but the authors of the delict, and they may sometimes be brought against one, who has committed the delict, when he can make restitution, since they are conjoined in one person, and sometimes against two or more, when they are disjoined and bifurcated, when he who has committed the delict has not possession of the thing, and cannot make restitution, and he who has possession has not committed the delict, but he can make restitution. Likewise of those actions which are personal arising out of a tort, or something like a tort, some are criminal, and some civil. Of criminal actions some are greater, some are minor, and of civil actions in the same manner, according to what has been partially touched upon above.

But actions for a thing are those, which are allowed against a possessor of it, who possesses it in his own name from whatever cause, and not in the name of another person, because he has the thing or possesses it, so that he may restore it, or name the person who has control over it: as if any one claims from another a certain thing, some estate or land, and contends that he has the right over it and therefore is the owner, and he sues for that thing, and not its price, nor its value, nor an equivalent of the same kind, and so it is a corporeal immovable thing, which is claimed for whatever cause from some one, who is not bound by any personal right. And on these grounds, that the claimant setting up the thing claimed to be his own has instituted an action against the holder of it, and the holder denies [the claim], there will be an action or a plea for the thing, and this, whether he claims it in his own name, or in regard of a thing which he himself holds, as persons under religious vows or rectors in the name of their churches, or others in the name of a corporation, as for a thing common [to the members], and this also whether he claims the thing itself, or a right which is attached

2.  
What are  
real actions  
for an im-  
movable.

f. 102 b.

petat ipsam rem, sive jus quod rei adhæreat sive teneñto, & quod à tenemento separari non possit, ut si quis petat advocationem alicujus ecclesiæ, vel cōmuniam pasturæ, vel q̄ liceat ei ire, vel agere, vel quid tale q̄ consistit in jure, in rē erit placitū, sive actio; quia hujusmodi jura omnia sunt res incorporales, & quasi possidentur, & insunt corporibus, & acquiri non possunt nec retineri sine corporib⁹ quibus insunt, nec haberi aliquādo sine corporibus ad q̄ ptineant.

4.  
Quæ sunt  
in rem de  
re mobili  
et quod  
oportet  
apponere  
precium de  
re repetita.

Dictum est suprā, si res sit immobilis quæ petitur, nunc cū sit res mobilis quæ petatur, sicut leo, bos, vel asinus, vestimentum, vel aliud quod constitit in pondere, vel mensura. Videtur prima facie quòd actio sive placitum esse debeat tam in rem, quàm in personam, eò quòd certa res petitur, & quòd possidens tenetur restituere rem petitam, sed revera erit in personā tantū, quia ille à quo res petitur, non tenetur precisè ad rem restituendam, sed sub disjunctione, vel ad rem, vel ad precium, & solvendo tantū precium liberatur, sive res appareat, sive non. Et ideò si quis rem mobilem vendicaverit ex quacunq; causa ablatam, vel commodatam, debet in actione sua definire precium, & sic proponere actionem suam. Ego talis peto, q̄ talis restituat mihi talem rem talis precii: vel conqueror q̄ talis mihi injustè detinet vel robbavit talem rem tanti precii, alioquin non valebit rei mobilis vendicatio, p̄cio non appposito. Idem erit si res mobiles petantur, quæ consistunt in pondere, numero, vel mensura, sicut massa, pecunia, vel triticum, vel aliæ quæ in liquido consistunt, sicut vinum & oleum, quo casu, si hujus-

to the thing or the tenement, and which cannot be separated from the tenement, as, for instance, if a person should claim the advowson of a church, or a common right of pasture, or that it is allowable for him to go on foot, or to drive cattle [across certain land], or something of the same sort, which consists in a right, there will be a plea or an action for the thing; because all such rights are incorporeal things, and are as it were possessed, and are adherent to corporeal substances, and cannot be acquired nor retained without the substances to which they are adherent, nor be held in any way without the corporeal substances to which they appertain. f. 102 b.

We have discussed above, if the thing be immovable, which is claimed, now when the thing claimed is movable, as a lion, an ox, or an ass, a robe, or anything else which consists in weight or in measure. It appears on first glance that the action or plea ought to be for the thing as well as against the person, on the ground that a certain thing is claimed, and that the holder of it is bound to restore the thing claimed, but in truth [the action] will be against the person only, because he from whom the thing is claimed, is not bound precisely to restore the thing itself, but disjunctively either the thing itself or its price, and upon paying the price he is released, whether the thing itself appears or not. And therefore if anybody claims a movable, from whatever cause it may have been carried off or lent, he ought in his action to define the price, and so to state his action: I, so and so, sue that so and so restore to me such a thing of such a price: or, I complain that so and so unjustly detains from me or has robbed me of such a thing, of such a price, otherwise the claim for a movable will not avail if the price of it be not stated. The same thing will happen if movable things are claimed which consist in weight, or number, or measure, like bullion or money or barley, or things which consist of liquid, as wine or oil, in which case, if things of such

4.  
What are  
real actions  
for a mov-  
able, and  
that it is  
requisite to  
state a  
price for  
the thing  
claimed.

modi res petantur, sufficit si implacitatus tantundem restituat quod sit ejusdem ponderis, numeri, generis & mensuræ, & unde, quia non compellitur præcisè ad rem quæ petitur, erit actio in ipsam personam, cùm implacitatus per solutionem tantundem possit liberari.

5.  
Quæ sit  
actio  
mixta.

Est autem actio mixta, tam in rem q̄ in psonam, & ideo sunt mixtæ, quia mixtam habent causam ad utrumq̄, sicut est divisio hæreditatis inter cohæredes participes, vel de proparte sororū. Vel alio modo de pparte, secund' quod res fuerit dividenda, ratione personarum, vel ratione rei, vel utriusq̄. Et eodem modo si res dividenda fuerit inter vicinos & non cohæredes, vel si distinguendi sint fines agroꝝ inter vicinos & baronias, per rationabiles divisas, vel p̄ perambulationem, in quibus casibus, hujusmodi actiones videntur esse mixtæ tam in rem, quàm in psonam, cùm quilibet sit eorum actor & reus, actor tamen dici poterit ille, qui prius ad iudicium pvocaverit, & ita comparatæ sunt quædā actiones sola gratia rei psequendæ, vel sola gratia pœnæ psequendæ, & sic sicut<sup>1</sup> simplices, vel gratia utriusque, & sic sunt duplices, vel tam in rem quam in personam, & sic sunt mixtæ, in rem ratione rei principalis, in psonam gratia personalium pstationum. Item mixta esse poterit & mixtam causam habere, secund' quod fuerit rei persecutoria & pœnalis, & ita erit quælibet actio in rem, persequitur enim rem ipsam & pœnam, propter injustam detentionem. Et eodē modo de actione in rem & in personam, & ita possit esse mixta & mixtam habere causam quælibet criminalis & civilis, sive oriatur ex maleficio vel quasi.

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<sup>1</sup> 'sunt' instead of 'sicut' seems to be required by the context.



sort are claimed, it will be sufficient if the defendant restores so much as is of the same weight or number or kind or measure, and hence, because he is not compelled to restore precisely the thing itself which is claimed, there will be an action against the person, since the defendant may be released by payment of an equivalent.

But a mixed action is for a thing and against a person, and they are for this reason mixed, because they have a mixed cause of action for each, just as there is a division of an inheritance amongst coparceners, or for the proportionate share of sisters. Or in another way for a proportionate share according as a thing is to be divided in regard of the persons, or of the thing, or of both. And in the same way if a thing is to be divided between neighbours, who are not coheirs, or if the boundaries of fields have to be distinguished between neighbours and baronies by reasonable divisions, or by perambulation, in which cases actions of this kind seem to be mixed, for a thing as well as against a person, since each of them is a plaintiff and a defendant, but he shall be best entitled to be called the plaintiff, who has first applied for a judgment; and so certain actions are brought solely for the sake of suing for a thing, or solely for the sake of suing for a penalty, and so they are simple actions, or [otherwise] for the sake of both, and so they are double, or for a thing as well as against a person, and so they are mixed, being for a thing by reason of the principal thing, and against a person for the sake of the personal contributions. So an action may be mixed and have a mixed cause, according as it is in prosecution of a thing and penal, and so it will be a kind of action for a thing, for it pursues the thing itself and the penalty on account of an unjust detention. And in the same way respecting an action for a thing and against a person, and so a kind of criminal and civil action may be mixed and may have a mixed cause, whether it arises from a tort, or something like a tort. There

5.  
What is a  
mixed  
action.

Sunt quædam quæ aliquando fiant perpetuæ & durare solent sine tēporis præfinitione, hodie verò ferè omnes infra certa tempora limitantur, pro defectu probationum, & sic sunt temporales, secundum quarundam actionum diversitates. Ferè dico, propter res, quæ de jure gentium pertinent ad coronā, ppter privilegium regis, sicut de rebus quæ in nulli<sup>9</sup> bonis sunt, nec habent dominum. Item de rebus, & libertatibus, & dignitatibus, quæ pertinent ad dignitatem domini regis, & coronam, & in quibus casibus nullum tempus currit contra ipsum, si petat, cū probare non habeat necessè, & sine probatione obtinebit, si implacitatus warrentum non habuerit, nec specialem libertatem, quia se ex longo tempore non defendet. Si aliquæ verò sunt actiones, quæ ex quacunque causa dentur in hæredes vel cōtra, dici poterunt transitoria, eò quòd transeunt ad hæredes vel contra.

6. Item actionum, quædam conceptæ sunt in simplum, Quod quædam conceptæ sunt in simplum, &c. quædam in duplum, qdam in triplum, quædam in quadruplum, & ita competere poterunt versus unicam personam, vel plures, & secundum quod fuerint rei persecutoria, vel poenæ. Item ex uno delicto plures oriri poterunt actiones, contra unum vel plures, & quandoque una actione poterunt terminari omnes. Item plures competere poterunt actiones alicui contra alium, quarum una erit præjudicialis & præambula, & prius terminanda. Item in uno libello, possunt duæ contineri actiones, quarum una in personam, alia verò in rem, & quarum quælibet simplex erit per se. Item actionum quædam directa, quædam indirecta, quædam contraria. Item quædam vulgaris, quædam generalis, quædam singularis. Item quædam communis, quædam propria, secundum quod, res quæ petitur communis

are some which sometimes become perpetual, and are accustomed to last without any limit of time, but in the present day nearly all are limited within certain times, on account of a [possible] failure of proof, and so they are temporary, according to the diversities of actions. I say "nearly all" on account of certain things, which under the law of nations belong to the crown, in virtue of the privilege of the king, as concerning things which are the goods of nobody, nor have any owner. Likewise concerning things and liberties, and dignities, which appertain to the dignity of the king and to the crown, and in which cases time does not run against the king, if he is claimant, since it is not necessary for him to prove, and he will prevail without any proof, if the defendant has no warranty, nor special franchise, for he shall not defend himself by length of time. But if there be some actions, which for whatever reasons are allowed to heirs or against them, they may be called transitory from the circumstance that they pass to the heirs or against them. f. 103.

Likewise of actions, some are brought for a single amount, some for a double amount, some for a triple amount, some for a quadruple amount, and thus they may be brought against a single person or several, and according as they are suits for a thing or for a penalty. Likewise many actions may arise out of one delict, against one person or against several, and sometimes all may be determined by one action. Likewise a person may be entitled to bring several actions against another person, of which one will be preliminary and preambular and to be determined first. Likewise in one libel two actions may be contained, of which one will be against a person, but another for a thing, and of which each will be simple by itself. Likewise of actions, some are direct, some are indirect, some are contrary. Likewise some are popular, some are general, some singular. Likewise some are common, some are private, according

6.  
That some  
actions are  
for a single  
sum, and  
so on.

erit vel propria. Item earum quæ sunt in rem, quædam proditæ sunt super ipsa possessione, & quædam super ipsa proprietate, est enim possessio rei & proprietas.

7.  
De actioni-  
bus civili-  
bus in rem.

Actionum autem civilium & in rem, sicut rei vindictio, alia confessoria, alia negatoria: confessoria, cùm dicat quis, aliq rem corporalem suam, sicut hunc servum, hunc fund, hunc equum, hanc vestē. Itē in rē, qdā recuperandæ possessionis causa, quædā adipiscendæ, & quædā retinendæ. Recuperandæ, hoc est, seysinę ppriæ priùs habitæ, p assisā novæ disseysinæ: adipiscendæ, hoc est alienæ, vid. alicujus antecessoris. Retinendæ, sicut interdicta, ne quis alteri vim faciat. Itē quandoq, gratia recuperandæ tam possessionis q pprietatis simul. Itē quandoq, causa recuperandæ possessionis, q quis ei concessit ad termiñ vitæ, vel annoñ. Item confessoria est, qua dicis tibi jus esse eundi p fundum vicini tui, aquàmve ducendi, eo invito, & hñodi. Et hæc actio in rem ideò dicitur, quia rem tuam incorporalem petis, sc. jus eundi p fund, & ideò confessoria dicitur, quia constituta est verbis affirmativis. Actio verò negatoria est, quam dominus fundi intendit adversùs te solitò euntem per fundum suum, dicens tibi non esse jus ire per fundum suum. Et hæc actio dicitur in rem, quia dominus fundi in hoc suam vindicat libertatem. Et hujusmodi actiones non competunt de dominio rei, sed de jure prædiorum.

as the thing sued for shall be common or private. Likewise of those actions which are for a thing, some are brought upon the possession, and some upon the property, for there is the possession and also the property of a thing.

But of civil actions for a thing, as for instance a claim for a certain thing, some are affirmative, others negative; affirmative, as when one asserts that a corporeal thing is his own, as for instance this serf, this estate, this horse, this robe. Likewise for a thing, some are for the object of recovering possession, some for acquiring it, and some for retaining it. For recovering it, that is, one's own seysine formerly enjoyed, by means of an assize of novel disseysine. For acquiring it, that is, another person's seysine, as the seysine of an ancestor. For retaining it, as for instance interdicts, to prevent a person doing violence to another. Likewise sometimes for the object of recovering as well the possession as the property at the same time. Likewise sometimes for recovering the possession of a thing which one has granted for a term of life or of years. Likewise an affirmative action is, when you say that you have the right of going across the land of your neighbour or of drawing water from it, against his will, or such like. And this is called an action for a thing because you seek an incorporeal thing of your own, namely the right of crossing the land [of your neighbour], and it is called an affirmative action, because it is drawn up in affirmative words. But an action is called negative, when the owner of an estate brings an action against you for usually going across his land, saying that you have no right to go across his land. And this is termed an action for a thing, for the owner of the estate claims his release from this. And these actions are not 'about the ownership of a thing, but about predial rights.

Of civil  
actions for  
a thing.

8. Item actionum civilium in personam, ex contractu vel quasi, quædam nascuntur ex pacto. Ex quasi contractu nasci dicuntur, quæ nec omnino ex pacto, nec omnino ex maleficio, sed tamen majorem cum pactis habent affinitatem, q̄ cum maleficiis. Ex maleficiis nascuntur actiones, quibus delicta hominum coercentur, sicut conditio rei furtivæ, actio vz. bonor̄ raptorū, actio legis Aquiliæ, & injuriar̄. Ex quasi maleficio nascuntur actiones, quæ nec ad pacta accedunt nec p̄prie ad maleficia, sed similia sunt maleficiis quàm pactis. Ex contractu & obligatione oriuntur actiones, secundum q̄ superius dictū est, aliæ re, aliæ verbo, aliæ literis, aliæ cōsensu. Re, ut conditio certi de mutuo. Conditio autem certi cōpetit ex omni causa, & obligatione, ex qua quid certū petitur, sive ex cōtractu certo, vel incerto. Causæ verò hujusmodi actionū sunt quatuor contract<sup>9</sup> superius nominati, de quibus superius dictum est, in titulo de donationibus. Ut do ut des, do ut facias, facio ut des, facio ut facias. Item est petitoria hæreditatis actio, & competit illis, quib<sup>9</sup> jus merum descendit ab antecessorib<sup>9</sup>, sicut hæredib<sup>9</sup> p̄pinq̄ioribus.

9. Possessoria verò hæreditatis petitio est de possessione propria, & quæ dicitur actio unde vi, per quàm restituitur spoliato sua possessio, & dici poterit assisa novæ disseysinæ. Itē dicitur possessoria petitio de possessione aliena, sicut alicuj<sup>9</sup> antecessoris, de aliquo teñto, de quo antecessor obiit seysit<sup>9</sup> ut de feodo, q̄ dicitur actio quor̄ bonor̄, sive assisa mortis antecessoris.

Likewise of civil actions against a person upon a contract or something like a contract, some arise upon a pact. They are said to arise from something like a contract, when they do not arise altogether upon a pact, or altogether upon a tort, but have a greater affinity with a pact than with a tort. Actions arise from torts, by which the delicts of men are restrained, as for instance an action for a thing stolen, an action for goods carried off by force, an action under the Aquilian Law, an action for injury. Actions arise from something like a tort, which approach properly neither to pacts nor to torts, but are more like torts than pacts. Actions arise from contract and obligation, according to what has been said above, some by a thing, some by a word, some by a writing, some by consent. By a thing, as a condition of something certain in a case of borrowing. But the condition of something certain may arise from any cause or obligation, under which any thing certain is claimed, whether from a certain or an uncertain contract. But the causes of these kind of actions are the four contracts above-named, concerning which we have made mention in the title upon donations. As I give that you may give, I give that you may do, I do that you may give, I do that you may do. There is also a petitionary action for an inheritance, and those persons are entitled to it, to whom the absolute right descends from ancestors, as to next heirs.

8.  
Of civil  
actions  
against a  
person,  
how they  
arise.

f. 103 b.

But a possessory petition of an inheritance is concerning one's own possession, and which is called an action *unde vi*, by which a person who has been spoiled of his possession has it restored to him, and it may be called an assize of novel disseysine. Likewise the term possessory petition is applied to a petition for the possession of another, as of a certain ancestor, concerning a certain tenement, of which the ancestor died seysed as of a fee, which is called an action *Quorum bonorum*, or an assize upon the death of an ancestor.

9.  
Of a pos-  
sessory  
petition of  
an inher-  
itance, which  
may be  
called an  
assize of  
novel dis-  
seysine.

## CAP. IV.

1. Itē videūd cui cōpetant actiones, q̄ ex maleficio oriuntur, & cōtra q. Et sciend', q̄ actio furti, sive conditio, dño rei cōpetat, contra furē, & ejus successorē, & cōtra q̄libet detentorē. Actio vi bonoī raptorī, de reb<sup>9</sup> mobilibus vi ablatiis, sive robbatis, datur dño reī, vel de cujus custodia surreptæ sunt, & qui intravit in solutionē erga dñm suū, ita q̄ ejus intersit agere. Actio vero legis Aquiliæ de hominib<sup>9</sup> p̄ feloniam occisis, vel vulneratis, dabitur p̄pinquioribus parentibus, vel extraneis homagio vel servitio obligatis, ita q̄ eorum intersit agere.

2. Actio verò injuriarū, competit ei, qui cōtumeliam vel injuriā passus est, contra eum qui injuriā intulit, vel pulsavit, verberavit, & malè tractavit, & in qua judex eum tanti condēpnabit, quāti actor dixerit se nolle injuriā sustinuisse, adhibita tamen p̄ judicē taxatione.

3. Actio, q̄ metus causa, datur ei, qui p̄babili metu coactus, rem suā tradidit, vendidit, vel p̄misit, versus eum qui metum intulit. Et dicitur metus p̄babilis, qui in virum constantem cadere posset, & non in hominem meticulosum. Actio de dolo competit ei, contra q̄ dolus cōmittitur. Actio verò sive interdict', vnde vi, sc. q̄ duplex est, scil. rei restitutoria, & p̄nalis, datur contra eū, qui vi dejecit, & datur ei, qui vi deject<sup>9</sup> est, ad restitutionē possessionis rei immobilis, qua quis vi dejectus est, & quo casu duplex est in persona



## CHAPTER IV.

Likewise we must see, who are entitled to bring actions which arise out of a tort, and against whom. And it is to be known that the action for a theft or for the recovery of the thing stolen is competent to the owner of the thing against the thief and his successor, and against the holder of the thing [stolen]. An action for robbery, on account of movables carried off by force or robbed, is allowed to the owner of a thing, or to him from whose custody they have been carried off, and who has entered into a contract of payment to their owner, so that he has an interest to bring the action. But an action under the Aquilian Law for men slain or wounded feloniously will be allowed to near relatives or to strangers bound to them by homage or by service, so that they have an interest to bring an action.

1.  
Who are entitled to bring actions, which arise out of a tort, and against whom.

But an action for injury is competent to him who has suffered an insult or an injury, against him who has inflicted the injury, or has beaten, struck, or ill-treated him, and in which the judge will condemn him for so much as the plaintiff says he would not have suffered the injury for, the judge however taxing the amount.

2.  
Who is entitled to bring an action for injury, and against whom.

An action on account of fear is allowed to him, who constrained by probable fear has delivered up, or sold, or promised a thing, against him who has caused the fear. And probable fear is that which falls upon a resolute man, and not upon a timid man. An action for deceit is competent to him, against whom the deceit has been practised. But an action or interdict for violent dispossession, which is of a double character, to wit for restitution and for a penalty, is allowed against him, who has by violence dispossessed another, and is allowed to him who has been dispossessed, for the restitution of the possession of an immovable, of which a person has been dispossessed by violence, and in which case double

3.  
Who is entitled to bring an action on account of fear, and against whom.

dejectoris, secundum quod inferius dicitur in assisa novae disseysinae, & in qua nec mortalitas, nec casus fortuitus liberat dejectorem.

4. Actio sive interdictum, quod vi aut clam, datur Cui et contra quem competat interdictum, quod vi aut clam. f. 104. adversus eum, qui in solo vel fundo alterius novum opus manu factum construxit, vel destruxit, & se occultavit ne sibi phiberetur, & qui talia construxit vel destruxit, per hanc actionem compelletur, ut id quod fecit in pristinum statum suis sumptibus reponat, ut res sit, sicut solet esse & debet. Hujusmodi vero actiones sive interdicta, non dantur heredibus nec in heredes, in eo quod poenalia sunt, sed dantur in eo quod sunt restitutoria.

5. Actio vero sive interdictum, de itinere actuque privato, Cui et contra quem competat interdictum de itinere actuque privato. datur adversus eos, qui injuste aliquod phibent uti sua servitute. Ait enim peritor, quod itinere actuque privato agitur, vel via hoc anno, ubi nec vi, nec clam, nec precario ab adversario usum est, quod minus ita utatur, vim fieri veto. Et hac omnia interdicta ex maleficio oriuntur.

6. Est etiam interdictum sive actio, quod bonorum, quod non ori- De interdicto, quorum bonorum. Inst. IV., t. xv. tur ex maleficio, sed ex quasi contractu, & datur heredibus propinquioribus de seysina mortis antecessoris, & datur adversus quoslibet possidentes.

7. Actionem autem civilem, quod sunt in re, aliae datae sunt Alia divisio actionum, si plures competant super una sup ipsa possessione, aliae perditae super ipsa proprietate. Et si super eadem re uni petenti competant plures actiones, sicut assisa novae disseysinae mortis antecessoris.

damages may be recovered against the person of the dispossessor, according to what will be stated below in the assise of novel disseysine, and in which neither mortality, nor fortuitous accident sets free the dispossessor.

The action or interdict "quod vi aut clam" is allowed against him, who on the soil or ground of another has constructed a new work made with the hand, or has demolished it and hid himself that he may not be prohibited, and he who has constructed or demolished such things shall be compelled by this action to replace at his own expense in its previous state that which he has done, that the thing may be as it has been accustomed to be, and ought to be. But actions or interdicts of this kind are not allowed to heirs nor against heirs, as far as they are penal, but they are allowed as far as they are for restitution.

4.  
To whom  
and against  
whom the  
interdict  
"quod vi  
aut clam"  
is compe-  
tent.  
f. 104.

But an action or interdict concerning a right of footway or private carriage way is allowed against those, who unjustly prevent a person using his servitude. For the prætor says, The enjoyment of a right of footway and private carriage way or road during this year, where it has been enjoyed by the adverse party neither by violence nor clandestinely nor permissively, I forbid any violence to be used to prevent it. And all these interdicts arise out of torts.

5.  
To whom  
and against  
whom the  
interdict  
concerning  
a right of  
footway or  
private car-  
riage way  
is compe-  
tent.

There is likewise the interdict or action "quorum bonorum," which does not arise out of a tort, but out of a kind of contract, and it is allowed to next heirs upon the seysine of the death of an ancestor, and it is allowed against any kind of possessor.

6.  
Of the  
interdict  
'quorum  
bonorum.'

But of civil actions, which are for a thing, some are allowed in regard to the possession, others in regard to the property. And if upon the same subject several actions are competent to one claimant, as an assise of novel disseysine, an assise of the death of an ancestor,

7.  
Another  
division of  
actions,  
if several  
are compe-  
tent on one

re, et una  
fuerit  
electa.

oris super possessione, & breve de ingressu, & breve de recto super proprietate, simul & semel omnibus uti non poterit, sed unam eligat quā voluerit, & una electa, nunq̄ habebit regressum ad alias, pendente illa, q̄ si ad aliam recurrat, impetratio de secunda non valebit. Si verò, quocunq̄ modo, ab incepta recesserit, per licentiam vel iudicium, in pponendis actionib<sup>9</sup> hunc ordinem observabit. Si enim ab assisa novæ disseysinæ recessum fuerit, statim habeatur recursus ad assisam mortis antecessoris, si competat, & postea ad breve de ingressu, & ad ultimum ad breve de recto, & ita ascendendo de possessione usque ad p̄prietatem, sed non è contrario descendendo, quia nunquā de brevi de recto fit descensus ad alia breviora inferiora, quia, qui semel egerit per breve de recto, totum jus tam super possessione quam super proprietate deducit in iudicium secund' quod videri poterit infra, ubi tractatur de brevi de recto. Nunq̄ enī à causa p̄prietatis fit descensus ad causam possessionis, nec postq̄ semel actum fuerit de seysina antecessoris, non possit quis agere de seysina propria per assisam.

Si quis se  
retraxerit  
ab una,  
cum fuerit  
electa.

Cùm autem ab actione in rem quis semel recesserit, vel ab actione se retraxerit, vel iudicium contrarium habuerit, nunquā ad eandem redire poterit, cùm semel actio extincta non reviviscit. Si autem ex quacunque causa à brevi se retraxerat pro aliquo defectu, & non ab actione, aliud erit.

9.  
Actionum  
tertia di-  
visio.

Item actionum quædam præjudiciales, quæ oriuntur ex incidentibus quæstionibus vel emergentibus, in quibus quæritur utrum aliquis sit ingenuus vel libertinus,

concerning the possession, and a writ of entry and a subject, writ of right as regards the property, he cannot make <sup>and one has been</sup> use of all at one and the same time, but he must choose <sup>elected.</sup> one at his pleasure, and after he has chosen one, he shall never have recourse to the others, whilst that is pending, but if he shall have recourse to another, his claim on the other shall not be entertained. But if by any means he has abandoned the suit which he has commenced, either by leave of the court or by a judgment, he shall observe this order in preferring his actions. For if he has abandoned an assise of novel disseysine, let him have forthwith recourse to an assise of the death of an ancestor, if it is competent to him, and afterwards to a writ of entry, and lastly to a writ of right, and so ascending from the possession to the property, and not on the contrary descending, for a descent from a writ of right to other inferior writs is never allowed, for whoever has brought an action upon a writ of right has brought before the court the whole title as to the possession as well as to the property, according as will be seen below when a writ of right will be treated of. For a descent is never made from a cause of property to a cause of possession, nor after an action has been brought respecting the seysine of an ancestor, can a person bring an action about his own seysine by an assise.

But when a person has abandoned an action for a thing, or has withdrawn from it, or had an adverse judgment, he can never return to the same, since an action once extinguished never revives. But if from whatever cause he has withdrawn from a writ on account of some defect, and not from an action, it will be different. <sup>8. If a person has abandoned one form of action, after electing it.</sup>

Likewise some actions are præjudicial, which arise upon incidental or emergent questions, in which it is questioned whether a person is freeborn or a freedman, <sup>9. A third division of actions.</sup>

& si libertinus, liber, vel servus? filius annon, & si filius, utrum legitimus vel bastardus? & hujusmodi, & dicuntur præjudiciales, quia prius judicantur quàm actio principalis. Et ut per hoc remaneat principalis vel procedat in quacunq; causa tam incidenti vel emergentē, ut si incidat conventio sive pactum, res judicata vel finis factus, vel alia quævis exceptio.

f. 104 b.

## CAP. V.

1.  
Ubi terminari debeant actiones criminales, vel placita  
videndū. Et sciēdum, q, si actiones criminales sint, in  
curia dñi regis debent terminari, cū sit ibi poena  
corporalis infligenda, & hoc corā ipso rege, si tangat  
psonam suā, sicut crimen læsæ majestatis, vel corā  
justitiariis ad hoc specialiter assignatis, si tangat psonas  
privatas. Vita verò, & memb̄ homiū sunt in manu  
dñi regis, vel ad tuitionem, vel ad poenā cū deli-  
querint, nisi ita sit fortè, quòd aliquis gaudeat spe-  
ciali libertate, q habeat Toll & Tem, &c. ut infrā.  
Ad dñm regem & coronam suam pertinet, cognoscere  
de crimine læsæ majestatis: ut de nece, vel seditione<sup>1</sup>  
psonæ suæ, vel regni, vel exercit<sup>9</sup> sui. Item crimen  
falsi, quod sub se continet plures species, & multiplici-  
ter fieri poterit, ut si quis falsaverit sigillum dñi regis,  
vel falsam monetā fabricaverit, vel de non re pba  
rem pbam fecerit, vel si quis falsario consenserit scienter.  
Item occultatio thesauri inventi fraudulosa, placitū de

<sup>1</sup> "Seditione" is the reading of MSS. Rawl. C. 160 & C. 159, MSS. Crewe & Glastonbury. "Seductione" is the reading of MSS. Galeazzo, Bodley, 170, and Gray's

Inn. MS. Hale reads "ut de nece  
" vel seditione personæ suæ, vel  
" suorum, vel regni, vel exercitus  
" sui."

and if a freedman, whether he is free or a serf? whether he is a son, and if a son, whether he is legitimate or a bastard? and such like, and they are called præjudicial, because they are judged before the principal action, and so that by this the principal action may be stayed or proceed in any kind of cause as well incident as emergent, as, for instance, if a convention or agreement should be incident, or a judgment or a fine, or any other exception.

## CHAPTER V.

f. 104 b.

We must see where criminal actions or pleas ought to be determined. And it is to be known that if actions are criminal, they ought to be determined in the court of the king, since it is there that corporeal punishment is to be inflicted, and this in the presence of the king himself, if it touches his person, as the crime of high treason, or in the presence of justices specially appointed for that purpose, if it touches private persons. But the life and the limbs of men are in the hand of the king, either for protection, or for punishment when they have been delinquent, unless it be that some one enjoys a special franchise, that he has Toll and Tem, &c., as below. It appertains to the lord the king and to his crown to take cognisance of the crime of high treason as concerning the death or the sedition<sup>1</sup> of his person, or of his kingdom, or of his army. Likewise the crime of falsification, which contains under it several species, and may be committed in manifold ways, as if a person should falsify the seal of the lord the king, or should fabricate false money, or of a thing not genuine should make one [apparently] genuine, or if any one shall knowingly collude with a falsifier. Likewise the fraudulent concealment of treasure trove, pleas

Where  
criminal  
actions  
ought to  
be deter-  
mined.

<sup>1</sup> Sedition. Mr. Emlyn in his note on Hale's Pleas of the Crown, l. p. 79, appears to be not warranted

in saying that "seductione" is the reading of the oldest MSS.

pace dñi regis fracta, et ista graviora sunt crimina & majora, quia principaliter tangunt psonam ipsius regis. Sunt etiam crimina aliquantul minora, eò q in parte tangunt ipsum regem ppter pacem suam infractam, in parte privatas psonas, contra quas delinquitur, sicut crimen furti, crimen roberiae contra pacem, & plagā. Item crimen homicidii, sive sit casuale vel voluntarium, licet eandem pœnam non contineant, quia in uno casu rigor, & in alio misericordia. Item crimen incendii, nequiter facti. Itē raptus virginis, vel sanctimonialis, vel matronæ honestè viventis. Item crimen roberiae & imprisonmenti, contra pacem. Item de libero homine imprisonmento, quor omnia pœnam corporalem infligunt, & secund q fuerint majora vel minora, gravem inducunt pœnā vel minùs gravem. Inducunt enī qdam ultimum supplicium, cū pœna graviori & tormentis, ne statim deficiant, quandoq sine tormentis. Item qdam inducunt membror truncationem, qdam exilium ppetuum, vel ad tempus, & eodem modo imprisonmentum. Pœnæ autem ad correctionem & correptionem hominum sunt inventæ, ut quos divinus timor à malo non revocat, tēporalis saltē pœna coerceat, & cohibeat à peccato. Ipse enim Deus propter iniquitatem corripit homines.

## CAP. VI.

1. Genera pœnar, quib<sup>9</sup> afficiuntur malefactores, sunt hæc. Sunt autem qdam, quæ adimunt vitam, vel membr̃. Sunt autem q auferunt civitatem, burgum, vel provinciā. Sunt autem q continent exilium ppetuum, vel ad tempus, vel corporis coercionem, sc. im-

De generi-  
bus pœ-  
narum, qui-  
bus homi-  
nes affici-  
untur prop-



of a breach of the king's peace, and these are more grave and greater crimes, because they concern principally the king's person. There are also crimes of a somewhat minor character, because they concern partly the king on account of a breach of his peace, partly private persons, against whom a delict has been committed, as for instance the crime of theft, the crime of robbery against the peace of the king, and of battery. Likewise the crime of homicide, whether it be accidental or intentional, although they do not contain the same punishment, because in one case there is rigour, and in the other mercy. Likewise the crime of arson, maliciously caused. Likewise the rape of a virgin or a nun, or a matron living honestly. Likewise the crime of robbery and imprisonment against the peace of the king. Likewise concerning the imprisonment of a free person, all of which inflict corporeal punishment, and according as they are more or less grave, they entail a punishment more or less grave. For some of them entail the last punishment, with more severe pain and torture, so that they faint not immediately, sometimes without torture. Likewise some of them entail mutilation of the limbs, some perpetual exile or temporary exile, and in the same manner imprisonment. But punishments have been invented for the correction and control of human beings, that those whom the fear of God does not recall from evil, temporal punishment at least may coerce and restrain from sin. For God himself corrects men on account of their iniquity.

## CHAPTER VI.

The kinds of punishments, with which men are visited, are these. There are likewise some which deprive them of life or limb. There are also some which deprive them of a right of citizenship, or of burghership, or of province-ship. There are likewise some which contain perpetual imprisonment, or temporary exile, or personal restraint,

1.  
Of the  
kinds of  
punish-  
ments, with  
which men  
are visited  
on account

ter eorum iniquitates. prisonamentū vel ad tempus, vel imperpetuum. Sunt  
 q̄dā q̄ fustigationem, verberationem, pœnam pillorā &  
 tymborā & dāpnū cum infamia inducunt. Sunt etiā  
 q̄dā, q̄ dignitatis & ordinis inducunt depositionem, vel  
 alicujus actus privationem, vel prohibitionem. Et non  
 alio modo puniatur quis, quā secundū quod se ha-  
 beat condemnatio, ut si gladio animadverti debeat in  
 aliquem, tunc non securi, nec telo, nec fustibus, vel  
 laqueo, alio quove modo. Item qui vivi exuri debent,  
 non eis verberibus noceatur, nec virgis, nec tormentis :  
 f. 105. quia plerique deficiunt dum torquentur, & hoc nisi  
 aliter exigat enormitas delicti. Solent præsides in  
 carcere continendos damnare ut in vinculis continean-  
 tur, sed hujusmodi interdictæ sunt à lege, quia carcer  
 ad continendos, & non puniendos haberi debeat. Re-  
 spiciendum est judicanti, ne quid aut durius aut remis-  
 sius constituatur, quā causa deposcit, nec enim aut  
 severitatis aut clementiæ gloria affectanda est : sed  
 ppenso judicio, prout quæque res expostulat, statuen-  
 dum. In leviorib<sup>9</sup> causis leniores esse debent, ad leni-  
 tatem. In gravioribus autem pœnis, severitatem legum,  
 cum aliquo temperamento benignitatis, subsequi. Et  
 pœnæ potiùs molliendæ sunt quā exasperandæ. De-  
 linquent latrones pposito, p factionem, ebrii impetu p  
 ebrietatem, cū ad manus vel ferrum pvenitur. Casu,  
 cū p infortunium, ut si aliquis venando, p telum in  
 feram missum, hominem interfecerit, & similia ppetra-  
 verit. Crimen vel pœna paterna nullā maculam filio  
 infligere potest. Igne concremantur, qui salutē domi-  
 norū suorū insidiaverint. Facta puniuntur, ut furta,

such as imprisonment for a time or in perpetuity. There are some which entail beating with a stick or with a whip, the punishment of the pillory or of the tumbrel, and damages with infamy. There are some which bring on deposition from a dignity or an order, or the deprivation of some act or a prohibition. And no one should be punished in any other way, than according to his condemnation, as if a man is to be put to death with a sword, then he is not to be put to death with an axe, nor with a spear, nor with cudgels, nor with a rope, nor in any other way. Likewise those who ought to be burnt alive, they are not to be pained with stripes, nor with rods, nor with tortures, for most persons faint when they are tortured, and this unless the enormity of the crime exacts otherwise. The governors of prisons are accustomed to condemn all persons ordered to be confined, that they shall be kept in chains, but these kinds of punishment are interdicted by law, because a prison ought to be kept for confinement, not for punishment. The judge ought to keep in mind that nothing be done either too harshly or too remissly than the cause requires, for he ought not to affect the vain boasting of severity or of clemency, but he should determine with a well weighed judgment according as each thing demands. In lighter causes they ought to be more lenient, towards leniency. But in graver punishments they should follow up the severity of the laws tempered with some benignity. And punishments are rather to be mollified than exasperated. Robbers commit delicts with design through faction, drunkards upon impulse through drunkenness, when they betake themselves to their fists or to a weapon. By accident, when by misfortune, as if any one in hunting has slain a man with a dart cast at a wild beast, and has perpetrated such like acts. The crime or punishment of a father inflicts no stain upon the son. They are burnt in the fire, who plot anything against the safety of their lords. Acts are punished, such as thefts, homicides.

f. 105.

homicidia. Scripta, ut falsa & libelli famosi. Consilia, ut conjurationes: sed hæc quatuor genera consideranda sunt septem modis, causa, psona, loco, tempore, qualitate, quantitate & eventu. Causa, ut in verberibus, quæ impunita sunt à magistro vel parente, nisi modum excedant, quia emendationis & non injuriæ gratia videntur adhiberi, & puniuntur, cùm quis p iram ab extraneo pulsatus est. Persona dupliciter spectatur, ejus s. qui fecit, & ejus qui passus est: aliter enim puniuntur ex eisdem factionibus servi quàm liberi, & aliter qui quidē aliquid in dñm parentēve cōmiserit quàm in extraneum, in magistratum quàm privatū. Et similiter ætatis ratio habenda est. Locus facit, ut idem sit furtum vel sacrilegiū, & secundum hoc minor poena vel major. Tempus discernit prædonem à fure, vel effractorem, & furem diurnum à nocturno. Quantitas discernit furem ab abigeo, secundum quod furtū fuerit majus vel minus, ut si quis suæ surripuerit fur erit, & si quis gregem, abigeus erit. Eventus, ut si ex voluntate & conscientia certa fecerit quis aliquid, sicut homicidiū, an ex eventu, ut supra: & secundum hoc, aut erit feloniam aut infortunium. Item est poena pecuniaria, sicut corporalis, & quælibet poena corporalis, quamvis minima, major est quælibet poena pecuniaria.

## CAP. VII.

1.  
Ubi terminandæ  
sunt  
actiones  
civiles.

Dictum est superius, in cujus curia actiones criminales debeant terminari, sive in cōm vel extra, sive in curia domini regis, vel alibi: nunc autem dicendum, ubi triandæ sunt actiones civiles, quæ sunt in rem vel

Writings, such as false and infamous libels. Designs, such as conspiracies. But these four kinds [of offences] are to be considered from seven points of view, the cause, the person, the place, the time, the quality, the quantity, and the event. The cause, as in the case of stripes, which are unpunished on the part of a master or a father, unless they exceed moderation, because they seem to be applied for improvement and not for punishment, and they are punished when any one through anger is struck by a stranger. The person is doubly considered, of him who has done the thing, and of him who has suffered it, for serfs are punished on a different scale from free men for the same actions, and differently in the case where one has struck one's lord or one's parent, than where one has struck a stranger; also where one has struck a magistrate, than where one has struck a private person. And in a similar manner regard is to be paid to age. Place causes the same act to be a theft, or a sacrilege, and accordingly the punishment is greater or less. Time distinguishes the robber or the burglar from the thief, and the thief by day from the thief by night. Quantity distinguishes the thief from the cattle-lifter, according as the theft is greater or less: as if a person shall have stolen a sow he is a thief, and if he has stolen a herd of swine he is a cattle-lifter. The event, as if with design and certain purpose a person has done any act, such as homicide, or if eventually as above, and accordingly it will be either felony or misfortune. Likewise there is a money penalty just as a bodily punishment, and any corporeal punishment, however small, is greater than a pecuniary penalty.

## CHAPTER VII.

It has been said above, in whose courts criminal actions ought to be determined, whether in the county or outside of it, whether in the king's court or elsewhere, now we must see where civil actions are to be tried,

1.  
Where civil  
actions are  
to be de-  
termined.

in personam. Et sciendū, quòd earum quæ sunt in rem, sicut rei vendicationes p breve de recto, terminari debent in curia baronum vel aliorum, de quibus ipse petens clamaverit tenere, si plenum rectum ei tenere voluerit, vel possit vel sciverit. Si autē noluerit, vel non possit, vel nesciverit, tunc probato à tenente, quòd curia dñi sui ei de recto defecerit, transferri debet placitum ad comitatum, ut vic. rectum teneat, & sic à cōm transferri possit ad magnam curiam, ex certa causa, si dominus rex voluerit, & ibi terminari. Sed hoc fieri non debet contra voluntatem dominorum, sicut olim fieri solet p principem, nisi ex prædictis causis, vel si dñs curiæ sponte curiam suam remisit ipsi regi. Et de hac materia habetis plenius infra, de actionib<sup>9</sup> civilib<sup>9</sup> in rem, sup ipsa pprietate p breve de recto. In cōm vero terminari possit placitū, p breve de recto, & corā vic. si ad magnā curiā dñi regis translatū non fuerit ut prædictum est. Itē quaestio status, sicut placitum de nativis, nisi ille, qui petitur, excipiendo se dicat esse liberū, & coram justitiariis dñi regis in adventu ipsorum se esse pbaturum, & quo casu, pacem habebit usq, ad adventū ipsorum, vel transferri poterit iudicium & pbatio ad magnā curiam, si dño regi placuerit. Item in cōm & coram vic. placitari possunt plura placita, in quib<sup>9</sup> vic. est justiciari<sup>9</sup> cōstitut<sup>9</sup> p breve, q justiciet, sicut de servitiis & consuetudinib<sup>9</sup>, de debitis & aliis placitis infinitis. Item placitum de vetito namii, in quo vic. justitiarius est & vic. & qualiter hujusmodi terminentur, inferius dicitur. Et quare non potest vic. in cōm judicare de ali-

f 105 b.

which are either for a thing or against a person. And it is to be known that those which are for a thing, like claims of realty through a writ of right, are to be determined in the court of the barons or others, from whom the plaintiff asserts his holding, if it is willing or able or has the knowledge to do him full justice. But if it is unwilling, or is unable, or is ignorant, upon proof by the tenant that the court of the lord has failed to do him justice, the plea ought to be transferred to the county, that the viscount may do him justice, and so it may be transferred to the great court, on certain grounds, if the king so wills, and there be determined. But this ought not to be done against the will of the lords, as was accustomed formerly to be done by the sovereign, except for the causes above said, or if the lord of the court has of his own accord remitted his jurisdiction to the king himself. And upon this matter you have a more full statement below, upon civil actions for a thing concerning the property itself by a writ of right. But the plea may be determined in the county by a writ of right and before the viscount, if it has not been transferred as above said to the high court of the lord the king himself. Likewise a question of *status*, as a plea of *naifty*, unless he who is claimed [for a *naif*] demurs by saying that he is a free man, and that he will prove it before the justices of the king on their next coming, and in which case he shall live at peace until their coming, or the judgment and proof may be transmitted to the High Court, if it pleases the lord the king. Likewise in the county and before the viscount several pleas may be pleaded, in which the viscount is the justice appointed by a writ, that he should execute justice, as concerning services and customs, debts and other infinite pleas. Likewise the plea of forbidden distress, in which the viscount is the justice and the viscount, and how such pleas are to be determined will be explained below. And wherefore the viscount cannot in the county judge

f. 105 b.

cujus libertate, sicut de ipsi<sup>9</sup> nativitate, cū pbatio libertatis sit quasi incidens placito de nativis, sicut possit in curia domini regis: nescio aliam causam assignare, nisi hoc sit ppter favorem libertatis, quæ est res inæstimabilis, & quæ insipientibus & min<sup>9</sup> discretis committi non debet ppter discrimen.

2.  
De diver-  
sitate jus-  
titiariorum.

Placita verò civilia in rem, & in psonam, in curia dñi regis terminanda, coram diversis justitiariis terminantur. Habet enim plures curias, in quibus diversæ actiones terminantur, & illarum curiarum habet unam ppriam, sicut aulam regiam, & justitiarios capitales qui pprias causas regis terminant, & aliorum omnium, p querelam vel p privilegium sive libertatem: ut si sit aliquis, qui implacitari non debeat nisi coram ipso domino rege. Habet etiam curiam, & justitiarios in banco residentes, qui cognoscunt de omnibus placitis, de quib<sup>9</sup> auctoritatem habent cognoscendi, & sine warranto jurisdictionem non habent, nec coercionem. Habet etiam justitiarios itinerantes de cōm in cōm, quandoq, ad omnia placita, quandoq, ad quædam specialia, sicut assisas novæ disseysinæ & mortis antecessoris capiendas, & ad gaolas deliberandas, quandoq, ad unicam vel duas & non plures: in iis casibus omnib<sup>9</sup> erunt curiæ ipsi<sup>9</sup> domini regis. Et sunt 2. recognitiones, s. de nova disseysina, & de morte antecessoris, quæ capi non debent nisi in suis comitatibus per communem libertatem, & hoc nisi inceptæ fuerint in comitatibus, quia si inceptæ fuerint in cōm, transferri possunt extra cōm de loco in locū, & extra cōm terminari, cum omnib<sup>9</sup> sequelis suis, sicut in cōvictionib<sup>9</sup> & certificationib<sup>9</sup>, cū evenerint, & sive hñodi recognitiones in cōm terminatæ fuerint sive non, non est phibitum quin cōvictiones & certificationes extra cōm trahi pos-



of the freedom of any one, as of his own naifty, since the proof of freedom is as it were incident to a plea about naifs as he may in the court of the lord the king: I know not how to assign any other cause, unless it be this, on account of freedom being favoured, which is an invaluable thing, and which ought not be entrusted to the unlearned and indiscreet on account of the risk.

But civil pleas for a thing or against a person, to be determined in the court of the king, are determined before different justices. For he has several courts, in which different actions are determined, and of those courts he has a special court of his own, as the King's Hall, and chief justices who determine the special causes of the king and of all others upon complaint, or through a privilege or franchise. As if there be some one, who ought not to be impleaded, except before the king himself. He has also a court and resident justices of the Bench, who hold cognisance of all pleas, respecting which they have authority to take cognisance, and without a warrant they do not exercise jurisdiction nor coercion. He has also justices itinerant from county to county, sometimes to hear all pleas, sometimes to hear special pleas, as to hold assises of novel disseysine or of the death of an ancestor, and to deliver jails, sometimes for one singly, or for two and not more. In all these cases the courts will be those of the king himself. And there are two recognitions, for instance, of novel disseysine and of the death of an ancestor, which ought not to be held except in their own counties by a common franchise, and this unless they have been commenced in the counties, because if they have been commenced in a county, they may be transferred out of the county from place to place and be determined outside the county with all their consequences, as in convictions and in certifications, when they have taken place, and whether recognitions of this kind have been determined in the county or not, it is not forbidden, that convictions and certifications may be

2.  
On the  
diversity of  
justiciaries.

sunt. Et sicut prædictum est in parte, trahuntur placita causis supradictis à curiis baronū usq, ad coñ, & ibi tminatur quādoq, & quādoq, inde trāsferuntur, & ponūtur corā justiciariis itinerātib<sup>9</sup> in coñ, & inde corā justic. de bāco, vel corā rege multis de causis.

3.  
Quæ placita immediate placitari et terminari debent in curia domini, et rationes quare.  
f. 106.

Sunt etiā int̃ alia placita, quædā quæ nō p trāslationē, sed immediatē tminari debent corā justitiariis vel corā rege, s. placitum de baroniis, ubi ipse petens tenere clamat immediatē de dño rege in capite p breve de recto, q vocatur præcipe in capite, & hoc ideò, quia hīc tāgit ipsum regem in toto, vel in parte. Item immediatē in curia domini regis terminari debent placita de advocationib<sup>9</sup> ecclesiarum, vel capellarum, & assisis ultimæ præsentationis, & est ratio, quia si alius à rege mandaret episcopis de admittendo clericum, & ipse non obtemperaret, alius à rege coercionem non haberet, & quia episcopus ad alterius mandatum, quāam regis, clericum admittere non tenetur. Item immediatē in curia domini regis placitantur placita de dotibus, ubi mulier nihil habet, & est ratio, quia si contra mulierem dotem petentem exciperetur, quòd dotem habere non posset, eò quòd viro, cujus nomine dotem petit, nunquam fuit legitimo matrimonio copulata, nullus alius præter regem posset episcopo demandare inquisitionem faciendam. Item immediatē pertinet ad regem querela finis factæ in curia domini regis & non observatæ, & est ratio, quia nemo potest finem interpretari, nisi ipse rex, in cuj<sup>9</sup> curia fines fiunt. Est enim ejus interpretari cujus est concedere. Item in curia domini regis immediatē placitantur plura placita, ppter

made outside the county. And as it has been said before in part, pleas in the above causes are carried from the courts-baron to the county, and there determined sometimes, and sometimes they are thence transferred and laid before the justices itinerant in a county, and thence before the justices of the bench, or before the king himself in many causes.

There are also amongst other pleas, which ought to be determined immediately, and not by transference, before the justices or before the king, as the plea for a barony, where the claimant to hold it claims immediately of the lord the king in chief by a writ of right, which is called a "præcipe in capite," and on the ground, that this touches the king himself, either altogether or in part. Likewise pleas about the advowsons of churches and chapels and about assises of last presentation ought to be determined immediately in the court of the lord the king, and the reason is because if another than the king were to send a mandate to a bishop to admit a clerk, and he should not obey, another than the king would not have coercive power, and because, a bishop is not bound to admit a clerk at the mandate of any other person than the king. Likewise pleas of dower, where the woman has nothing, are pleaded in the court of the lord the king, and the reason is, because if it were objected against a woman claiming dower, that she could not have dower, because she was never joined in lawful matrimony to the man, in whose name she claims dower, no one else than the king could demand from the bishop an inquiry into the subject. Likewise a complaint of a fine having been made in the court of the king, and of its not being observed, pertains immediately to the king, and the reason is, because no person may interpret a fine, except the king himself, in whose court fines are made. For it is for him to interpret, whose office it is to grant. Likewise in the court of the king are immediately pleaded several pleas, on account

3.  
What pleas  
ought to be  
pleaded and  
determined  
immedi-  
ately in the  
lord's  
court, and  
the reasons  
wherefore.  
f. 106.

impotentiam aliorum ex necessitate, cū non possit aliquis baro, vic. vel alius de liberis tenementis cognoscere, nec tenens tenetur respondere, sine præcepto vel warranto dñi regis, nec etiam possunt aliquem de hujusmodi, ad sacramētū sine warranto compellere, & hujusmodi placita sunt infinita. Qualiter autem placita ppter necessitatem, de curia in curiam transferuntur multipliciter, vel propter indulgentiā privilegiatorum sicut Templariorum, & hujusmodi, infrā dicetur plenius, p translationē p pone.

1.  
Ubi, et  
coram  
quibus  
personis  
proponen-  
dæ sunt  
actiones et  
terminan-  
dæ.

## CAP. VIII.

Videndum etiam ubi, & coram quibus personis proponendæ sunt actiones & probandæ, & sciendum quòd in iudicio. Videndum est igitur quid sit iudicium.

2.  
Quid sit  
iudicium,  
et in quibus  
consistit,  
et quod  
iudicium  
iudicis  
consistit  
in tribus.

Et sciendum, quòd iudicium est in qualibet actione trinus actus trium personarum: iudicis vz., actoris, & rei, secundū quod largè accipi possunt hujusmodi personæ, s. quòd duæ sint personæ ad minus, inter quas vertatur contentio, & tertia persona, ad minus, qui iudicet, alioquin non erit iudicium, cū istæ personæ sint partes principales in iudicio, sine quibus iudicium consistere non potest. Judex verò sive iustitarius, uti debet veritate, & veritas iudicii in tribus consistit, s. in indifferenti & æquali personarum susceptione, ut legitur in Deuteronomio, audite illos, & quòd justum fuerit, iudicate: sive civis sit iste, sive peregrinus, nulla erit distantia personarum, ita parvum audietis ut magnum, nec accipietis cujusquam personam, quia Dei iudicium est. Item in eodem libro capitul 16. non accipies personam, nec munera, quia munera excæcant &c. ut infrā de justic. Item consis-

of the want of power in others, from necessity, since a baron, or a viscount, or another cannot hold cognisance of free holdings, nor is the freeholder bound to answer without a precept or warrant from the king, nor can they without a warrant compel any one on a subject of freehold to make oath, and pleas of this kind are infinite. But how pleas are transferred in manifold ways from court to court from necessity, or from indulgence in the case of privileged bodies, as the Templars and such like, will be stated more fully below, through a transference by a "Pone."

## CHAPTER VIII.

We must see also where, and before what persons actions are to be propounded and proved, and it is to be known that it is in a judgment. We must see therefore what is a judgment.

And it is to be known, that a judgment is in each action a threefold act of three persons, namely, the judge, the plaintiff, and the defendant, according to what may be loosely said of such persons, namely, that there are two persons at least between whom the contention turns, and a third person at least who is to judge, otherwise there will not be a judgment, since these persons are the principal parties in a judgment, without whom a judgment cannot take place. But a judge or justice ought to use truth, and the truth of a judgment consists of three things, namely, in an impartial and equal acceptance of the persons, as it is read in Deuteronomy, "hear them, and judge what is just;" whether he be a citizen or a stranger, there shall be no distinction of persons, you shall hear the lowly equally as the great, neither shall you respect the person of any one, because it is the judgment of God. Likewise in the same book (chapter 16), thou shalt not respect persons, neither take a gift, for gifts blind [the eyes of the wise] &c., as below concerning justices. Likewise it consists in a diligent

1.  
Where, and before what persons, actions are to be propounded and determined.

2.  
What is a judgment, and of what it consists, and that the judgment of a judge consists of three things.

f. 106 b. tit in diligenti examinatione, quia oportet judicem cuncta rimari. Hoc intelligens Job, ait, 29. Causam, quam ignorabam, diligentissimè investigabam, non enim dicit diligenter vel diligentius, immo diligentissimè. Debet enim judex p examinationem de dubiis facere certum, & de credulitate veritatem, de ignorantia notitiā & notorium, sive notitiam de ignoto. Item consistit veritas judicii, in justa sententiæ prolatione, & justa & diligenti executione, ut in Deuteronomio xvi. Justè q justum est psequeris, ut vivas & possideas terram, quam Dominus Deus datur<sup>9</sup> est tibi. Et secundo libro Paralipomenôn, 19. ubi dicitur. Videte quid faciatis, non enim hominis exercetis judicium sed Dei, & illud idem q judicaveritis, in vos redundabit, sit timor Domini vobiscum, & cum diligentia cuncta facite. Non enim est apud Dñm Deum vestrum iniquitas, nec psonarum acceptio, nec cupido munerū, quæ excæcant oculos sapientum, & pvertunt verba justorum, ut legi in Ecclesiastico, ca. 20.

3. Xenia<sup>1</sup> & dona excæcant oculos judicem, & qui dona & munera dixit, omne gen<sup>9</sup> muneris intellexit. Munus, s. à manu, quale est res corporalis quæ præstatur. Munus à lingua, quale est blandiens & adulatoria supplicatio, laudum celebre præconium, vanæ gloriæ symphonia. Item munus ab obsequio, quale est servitium acceptum & impensum, p quo extorquetur judicii rectitudo. Item nec munus,<sup>2</sup> munus à sanguine vocari meretur, cū p sanguinis linea recti judicii linea recurvatur. In hoc enim tangit sanguis sanguinem. Hæc pfecto genera munerum sordidorum nomine nuncupantur, & lex humana gravem poenā infligit judici corrupto p sordes, s. p munera sordida, ubi si judex vel

<sup>1</sup> "Exennia." MS. Rawl. C. 160. | It is omitted in MS. Gal. "nec  
<sup>2</sup> "nec minus." MS. Rawl. C. 160. | munus" is an error of the scribe.

examination, for a judge ought to search out every thing. Understanding this, Job says (chapter 29), "The cause f. 106 b.  
 " which I knew not I searched out most diligently;" for he does not say "diligently," or "more diligently," but "most diligently." For a judge ought by examination to make certainty out of doubtful things, truth out of things believable, knowledge out of ignorance, things well known out of things unknown. Likewise the truth of a judgment consists in the just pronouncement of a sentence, and in the just and diligent execution of it, as in Deuteronomy (chapter 16): "Thou shalt pursue justly  
 " what is just, that thou mayest live and possess the land  
 " which the Lord thy God is about to give thee." And in the second book of the Chronicles: "Take heed what  
 " you do, for you do not exercise the judgment of man,  
 " but of God, and that which you judge, the same shall  
 " redound to you, let the fear of the Lord be with you,  
 " and do all things with diligence." For there is no iniquity with the Lord your God, nor respect of persons, nor desire of gifts, which blind the eyes of the wise and and pervert the words of the just, as is read in Ecclesiasticus, chapter 20.

"Presents and gifts blind the eyes of the wise," and he who says "presents and gifts," meant every kind of gift. *Munus* is from *manus* (the hand), as in the case of a corporeal substance, which is offered [to the judge]. *Munus* is [likewise] from the tongue, such as a fawning and flattering supplication, a public address of laudation, the symphony of vain glory. Likewise *munus* is from obeisance, such as a service received and performed, in return for which the rectitude of judgment is warped. Likewise no less a gift deserves to be so called from [ties] of blood, since the straight line of judgment is warped by the line of blood. For in this blood touches blood. Forsooth these kinds of gifts are named by the title of filthy, and human law inflicts a heavy penalty on a judge who is corrupted by filth, that is by filthy gifts, where the judge or the justice

3.  
 That gifts  
 are four-  
 fold.

justitiari<sup>2</sup> paciscatur cum litigatore ad certam partem litis, ut C. ad legem vel repetet<sup>1</sup> L. omnis, ubi dicitur: omnes cognitores & iudices, à re cuius manus<sup>2</sup> abstineant, nec alienum iurgium putent suam prædam. Etenim privatarum quoque litium cognitor, idemque mercator, statutam legibus<sup>3</sup> cogetur subire jacturam. Jactura enim sine poena erit, quod idem, qui recepit, restituat in quadruplum. Ut C. s. L.<sup>3</sup> ultima in fine, quia ibi tenentur in quadruplum, sive tempore administrationis aliquid receperint sive post, quocumque titulo vel quocumque velamento, ut si finxerit intervenisse titulum donationis, vel venditionis. Re vera sordid<sup>2</sup> est ille, quem iudicii veritas non adornat, ut si favor, vel odium, timor, invidia vel præmium inducunt contrarium, ut iudicii veritas corruat in plateis, de quo dici poterit, vae illi sordido, per quem veritas sordescit in paludibus platearum, nec erit inter beatos connumerand<sup>2</sup>, de quibus dicitur, beat<sup>2</sup> qui excutit manus suas ab omni munere. Ab omni tamen munere non est abstinendum, quia licet ab omnibus & passim avarissimum sit accipere & vilissimum: à nemine tamen erit inhumanum, ut si amicus<sup>2</sup> accipiat ab amico solo intuitu amicitiae & amoris. Actor verò, sive sit petens sive querens, uti debet intentione. Docere enim debet, & rationem prætere, qui ad ipsum pertineat actio, & qui pars esse possit

<sup>1</sup> "ad legem vel repetet." MS. Rawl. C. 160 and MS. Gal. both read "ad legem Jul. repetet," which Selden ad Fletam, ch. iii., had suggested to be the correct reading in accordance with the text of the Code of Justinian.

<sup>2</sup> "a re cuius manus." This

singular reading is a corruption of "a pecuniis manus," which is the reading of MSS. Rawl. C. 160, and Gal.

<sup>3</sup> "C. s. L." C. e. L. is the reading of Rawl. C. 160, Eadem L. of MS. Gal.



bargains with the litigator for a certain part of the thing in litigation, as in the Code upon the law of bribery, the law "Omnes,"<sup>1</sup> which says, let all arbitrators and judges keep their hands away from money, nor let them regard the lawsuits of others as their own booty. For an arbitrator in private suits and likewise a merchant shall be compelled to suffer the loss imposed by the law. For the loss shall be without punishment, that he shall restore fourfold what he has received, as in the Code in the same place, in the last law at the end, where they are bound in a fourfold penalty, whether they have received anything at the time of their administration or after, under whatever title, or whatever veil, as if he shall have feigned, that the title of a gift or a sale has intervened. In truth he is filthy, whom the truth of justice does not adorn, as if favour or hatred, fear, envy, or a reward should induce the contrary, that the truth of justice should be prostrate in the streets, concerning which it may be said, Woe to that filthy man, by whom truth is defiled in the puddles of the streets, nor shall he be accounted amongst the blessed, of whom it is said, Blessed is he who keeps his hand free from gifts. But persons are not to abstain from every gift, for although it would be most avaricious and most vile to accept from every one and from every quarter, to accept from no one would be inhuman, as if a friend should accept from a friend with the sole motive of friendship and of love. But the plaintiff, whether he is a petitioner or a complainant, ought to state the issue. For he ought to show and maintain by argument that he has a right to the action, and that he may be a party to the judgment, for he ought to set forth before him,

<sup>1</sup> The reference is to the Code, l. ix. tit. xxvii. Ad legem Juliam repetundarum, § 3. "Omnes cognitores et iudices a pecuniis atque patrimonii manus absti-

"neant, neque alienum jurgium  
"putent suam prædam. Etenim pri-  
"vatarum quoque litium cognitor,  
"idemque mercator, statutam legi-  
"bus cogetur subire jacturam."

in iudicio, ponere enim debet corā eo, qui jus dicturus est, intentionē suam, & illam fundare & pbare. Reus vero uti debet exceptione & defensione, secundū quod inferiūs diceť pleniūs.

4. Oportet etiam, quòd ille qui iudicat, ad hoc quòd  
De potes- rata sint iudicia, habeat jurisdictionem ordinariam vel  
tate iudicis. delegatam, & non sufficit quòd jurisdictionem habeat,  
f. 107. nisi habeat coercionem, quòd si iudicium suum execu-  
tioni demandare non posset, sic essent iudicia delusoria.  
Non enim habet ordinarius jurisdictionem & executionē  
in omni causa, cūm jura sint separata & limitata.

5. Sunt enim causæ spirituales, in quibus iudex secu-  
De divisi- laris non habet cognitionem nec executionem, cūm non  
one juris- habeat coercionem. In hiis enim causis pertinet cog-  
dictionum nitione ad iudices ecclesiasticos, qui regunt & defendunt  
sacerdotii sacerdotium. Sunt autem causæ seculares quarum cog-  
et regni. nitione pertinet ad reges & principes, qui defendunt  
regnum, et de quibus iudices ecclesiastici se intromit-  
tere non debent, cūm eorum jura sive jurisdictiones  
limitatæ sunt et separatæ, nisi ita sit quòd gladius  
juvare debeat gladium, est enim magna differentia  
inter sacerdotium et regnum.

## CAP. IX.

1. Cum autem de regimine sacerdotii nihil pertineat  
De regi- ad tractatum istum, ideò videndum erit de iis, quæ  
mine juris- ad tractatum istum, ideò videndum erit de iis, quæ  
dictionis, pertinent ad regnum, quis primò et principaliter possit  
quæ per- et debeat iudicare. Et sciendum quòd ipse rex et non  
tinet ad alius, si solus ad hoc sufficere possit, cūm ad hoc p  
regnum. virtutem sacramēti teneatur astrictus.

2. Debet enim in coronatione sua, in nomine Jesu  
De sacra- Christi præstito sacramēto, hæc tria pmittere populo  
mento, quod rex facere sibi subdito. Inprimis se esse præcepturum & p viri-

who is to give judgment, the issue, and to found it and to prove it. The defendant on the other hand ought to state his demurrer and his defence, according as will be stated more fully below.

It is requisite also that he, who judges, in order that his judgments should be ratified, should have jurisdiction, ordinary or delegated, and it is not sufficient that he have jurisdiction, unless he has coercive power, for if he cannot carry his judgment into execution, his judgment would be illusory. For a judge ordinary has not jurisdiction and the power to enforce it in every case, since rights are separated and limited.

4.  
Of the power of the judge.  
f. 107.

There are for instance spiritual causes, in which the secular judge has no cognisance nor execution, since he has not coercive power. For in these causes the cognisance pertains to ecclesiastical judges, who rule and defend the priesthood. But secular causes, of which the cognisance belongs to kings and princes, who defend the kingdom, and with which ecclesiastical judges may not intermeddle, since their rights are separated and limited, unless it be that the sword ought to help the sword, for there is a great difference between the priesthood and the kingdom.

5.  
Of the divisions in the jurisdictions of the priesthood and of the kingdom.

## CHAPTER IX.

But since nothing which pertains to the regulation of the priesthood belongs to this treatise, therefore we must see concerning the things which pertain to the kingdom, who in the first place and principally may and ought to judge. And it is to be known that the king himself and no one else, if he alone can suffice to do it, since he is bound by virtue of his oath to do it.

1.  
Concerning the regulation of the jurisdiction, which pertains to the kingdom.

For the king ought at his coronation, having taken an oath in the name of Jesus Christ, to promise three things to the people, who are placed under him. In the first

2.  
Concerning the oath, which

debet in  
corona-  
tione.

bus opem impensurum, ut ecclesiæ Dei & omni populo Christiano vera pax omni suo tempore observetur. Secundò, ut rapacitates & omnes iniquitates omnibus gradibus interdicat. Tertiò, ut in omnibus judiciis æquitatem præcipiat & misericordiam, ut indulgeat ei suam misericordiam clemens & misericors Deus, & ut per justitiam suam firma gaudeant pace universi.

3.  
Ad quod  
rex creatus  
sit in ordi-  
naria juris-  
dictione.

Ad hoc autem creatus est & electus, ut justitiam faciat universis, & ut in eo Dominus sedeat, & per ipsum sua judicia discernat, & quod justè judicaverit sustineat & defendat, quia si non esset, qui justitiā faceret, pax de facili posset exterminari, & supervacuum esset leges condere, & justitiā facere, nisi esset qui leges tueretur. Separare autem debet rex (cùm sit Dei vicarius in terra) jus ab injuria, æquum ab iniquo, ut omnes sibi subjecti honestè vivant, et quòd nullus alium lædat, & quòd unicuiq, q suum fuerit, recta contributione reddatur. Potentia verò omnes sibi subditos debet præcellere. Parem autem habere non debet, nec multo fortiùs superiorem, maximè in justitia exhibenda, ut dicatur verè de eo, magnus dominus noster, & magna virtus ejus &c. Licet in justitia recipienda minimo de regno suo comparetur, & licèt omnes potentia præcellat, tamen (cùm cor regis in manu Dei esse debeat) ne sit ineffrænata, frænium apponat temperantiæ, & lora moderantiæ, ne cùm ineffrænata sit, trahatur ad injuriā. Nihil enim aliud potest rex in terris, cùm sit Dei minister & vicarius, nisi id solū q de jure potest, nec obstat q dicitur, q principi placet, legis habet vigorē, quia sequitur in fine legis, cum lege regia, quæ de imperio ej<sup>2</sup> lata est, i.

place that he will enjoin and as far as in his power lies take care, that a true peace shall be maintained for the church of God and all Christian people at all time. Secondly, that he will interdict all rapacities and other iniquities in all grades. Thirdly, that in all judgments he will enjoin equity and mercy, so that a clement and merciful God may indulge him with his mercy, so that all persons may enjoy a firm peace through his justice.

the king  
ought to  
make at  
his corona-  
tion.

But for this purpose he has been created and elected, that he should do justice to all persons, that in him the Lord should sit, and that he should of himself decide his own judgments, and maintain and defend what he has justly judged, for if there was no one to do justice, peace would be easily exterminated, and it would be superfluous to make laws and to distribute justice, unless there was some one to maintain law. But the king (since he is the vicar of God on earth) ought to separate justice from injustice, right from wrong, so that all his subjects may live honestly, and that no one may hurt another, and that to each there may be rendered by a just contribution what is his own. But he ought to surpass all his subjects in power. But he ought not to have a peer, much less a superior, chiefly in showing justice, so that it may be truly said of him, Our high lord, and his high excellence, &c. Although in receiving justice he may be compared to the least person within his kingdom, and although he surpasses all in power, nevertheless (since the heart of the king should be in the hand of God), lest his power should be unbridled, let him apply the bridle of temperance and the reins of moderation, lest if his power should be unbridled, he may be led onwards to injustice. For a king can do nothing on the earth, since he is the minister and vicar of God, except that which he may do of right, nor is that an objection which is said, that the pleasure of the prince has the force of law, for it follows at the end of the law with the *Lex Regia*, which is passed to grant him empire, to wit, not whatever

3.  
For what  
purpose  
the king  
has been  
created  
with ordi-  
nary juris-  
diction.

f. 107 b. non quicquid de volūtate regis temere præsumptū est, sed animo condendi jura, sed quod consilio magistratum suorum, rege auctoritatem præstante, & habita sup hoc deliberatione & tractatu, rectè fuerit definitum. Potestas itaq, sua juris est, & non injuriæ, & cū ipse sit author juris, non debet inde injuriarum nasci occasio, unde jura nascuntur, et etiam qui ex officio suo alios prohibere necesse habet, id ipsum in propria persona committere nō debet. Exercere igitur debet rex potestatem juris, sicut Dei vicarius & minister in terra, quia illa potestas solius Dei est, potestas autem injuriæ diaboli et non Dei, & cujus horum opera fecerit rex, ejus minister erit, cujus opera fecerit. Igitur dum facit justitiam, vicarius est Regis Æterni, minister autem diaboli, dum declinet ad injuriam. Dicitur enim rex à benè regendo, & non à regnando, quia rex est dum benè regit, tyrannus dum populum sibi creditum violenta opprimit dominatione. Temperet igitur potentiam suam per legem, quæ frænum est potentiæ, quòd secundū leges vivat, quòd hoc sanxit lex humana, quòd leges suum ligent latorem, & alibi in eadem, digna vox majestate regnantis est legibus, s. alligatum se principem proficiscere, i. profiteri. Item nihil tam proprium est imperii, quàm legibus vivere, & majus imperio est legibus submittere principatum, & meritò debet retribuere legi, quia lex tribuit ei, facit enim lex quòd ipse sit rex. Item cū non semper oporteat regem esse armatum armis sed legibus, addiscat rex sapientiam, et conservet justitiam, et Deus præbebit illam sibi, et cū illam invenerit, beatus erit si tenuerit eam, cū sit honor & gloria in sermone sensati, &

is presumed rashly of the king's own will, but with the intention to make law, and that which has been rightly defined with the counsel of his magistrates, the king himself authorising it, and deliberation and discussion having been had upon it. His power therefore is the power of justice, not of injustice; and since he himself is the author of justice, an occasion of injustice ought not to arise from the source whence justice originates; and likewise he, who from his office is obliged to prohibit others, ought not to commit anything in his own person. The king ought therefore to exercise a power of justice, as being the vicar and minister of God on earth, for that power belongs to God alone, but the power of injustice is the power of the devil, not of God, and the king will be the minister of that one of these, whose works he does. Therefore whilst he does justice, he is the vicar of the Eternal King; but he is the minister of the devil, when he turns aside to injustice. For he is called king (*rex*) from ruling (*regendo*) well, and not from reigning (*regnando*), for he is king whilst he rules well, and a tyrant (*tyrannus*) when he oppresses with violent dominion the people entrusted to him. Let him therefore temper his power by law, which is the bridle of power, that he live according to laws, because a human law has sanctioned that laws bind the lawgiver himself, and elsewhere in the same it is a saying worthy the majesty of one who reigns, that the prince should avow himself to be bound by the laws. Likewise nothing is so appropriate to empire as to live according to laws, and to submit the principedom to law is greater than empire, and it is a deserved tribute in return to law, as the law pays tribute to him, for law makes that he is king. Likewise, since it is requisite for a king to be armed, not always with weapons but with laws, let the king learn wisdom and maintain justice, and God will supply him with it, and when he has found it, he will be blessed if he has kept it, since there is honour and glory in the conversation

f. 107 b.

lingua imprudentis subversio ipsius, & principatus sensati stabilis, & rex sapiens judicabit populum suum. Si autem fuerit insipiens, perdet illum, quia à capite corrupto descendit corruptio membrorum, et si sensus & vires non vigeant in capite, sequitur quòd cætera membra suum non poterunt officium exercere. Non solùm autem sapiens esse debet sed misericors, & cum sapientia misericorditer justus, & licet tutius sit redere rationem pro misericordia, quàm pro judicio: tutissimum tamen est, ut ita palpebræ ejus præcedant gressus suos, quòd judicium non vacillet per imprudentiam, nec misericordia decipiat per incircumspectionem. Misericordia siquidem injusta est cum incorrigibili, & non est in eos liberalitatis augustæ referenda humanitas, qui impunitatem veteris admissi consuetudinibus<sup>1</sup> potiùs quàm emendationi deputarunt. Et cùm indulgeat judex indigno, nonne ad prolapsionis contagium provocat universos? Sic ergo misereatur indigno, ut semper homini condoleat. Item pauperis non misereatur quis in judicio, misericordia, s. remissionis, cui tantùm misericordia compassione<sup>2</sup> est, sicut & omnibus miserendum. Et quib<sup>3</sup> & qualiter sit miserendum, eum doceat<sup>3</sup> merita vel demerita personarum.

## CAP. X.

f. 108.

1.  
De jurisdictione  
delegata,  
quæ ad  
justitiosarios  
pertinet.

Dictum est in proximo de ordinaria jurisdictione, quæ pertinet ad regem, consequenter dicendum est de jurisdictione delegata, ubi quis ex se ipso nullam habet auctoritatem, sed ab alio sibi commissam, cùm ipse, qui delegat, non sufficiat per se omnes causas sive jurisdictiones terminare. Et si ipse dominus rex ad singulas causas terminandas non sufficiat, ut levior sit

<sup>1</sup> "consuetudini," MS. Rawl. C.  
160.

<sup>2</sup> "compassionis," id.

<sup>3</sup> "doceant," id.



of the sensible man, and in the tongue of the foolish there is his own overthrow, and the principedom of the sensible man is stable, and a wise king will judge his people. But if he be unwise he will destroy it, because from a corrupt head proceeds the corruption of the members, and if there be not sense and strength in the head, it follows that the rest of the members cannot perform their functions. For he ought to be not only wise but merciful, and with wisdom mercifully just, and although it be safer to state reasons for mercy than for judgment, nevertheless it is most safe that his eyelids should precede his steps in such manner, that his judgment should not vacillate from want of practical knowledge, nor his mercy blunder from want of circumspection. Since mercy without justice is on the side of the incorrigible, and the humanity of an august liberality is not to be exhibited towards those who attribute the impunity of an old offence to custom, and not to improvement. And when the judge is indulgent to an unworthy person, does he not encourage all to the contagion of giving way? Let him show so far mercy to the unworthy, as always to sympathise with his fellowman. Likewise let him not have mercy for the poor in his judgment, that is the mercy of forgiveness; for to them only the mercy of compassion is due, as it is due to all mankind. And to whom and in what degree mercy is to be shown let him be taught by the merits or demerits of the individuals.

## CHAPTER X.

f. 108.

It has been treated above of ordinary jurisdiction, which pertains to the king, it follows that we should speak of delegated jurisdiction, where a person has no authority of himself, but authority committed to him by another, when he who delegates is not able to determine of himself all the causes or the jurisdictions. And if the lord the king himself is not sufficient to determine

1.  
Of dele-  
gated juris-  
diction,  
which be-  
longs to  
justices.

illi labor, in plures personas partito onere, eligere debet de regno suo viros sapientes, & timentes Deum, in quibus sit veritas eloquiorum, & qui oderunt avaritiam, (quæ inducit cupiditatem,) & ex illis constituere justitiosos, vic. & alios ballivos & ministros suos, quibus referantur tam quæstiones super dubiis, quàm querimoniæ sup injuriis, & qui nec ad dextram nec ad sinistram viæ propter prosperitatem terrenam, vel adversitatis metum, à tramite justitiæ non declinent, sed judicent populum Dei in æquitate, ut dici possit de eis cum psalmista, quòd de vultu eorum judicium prodiiit æquitatis; et considerent efficaciter, quid oportuerit secundùm necessitatem, quid expedierit secundùm utilitatem, quid liceat secundùm promissionem, quid deceat secundùm honestatem. Et tale judicium diligit honor regis, cujus personam in judicio & judicando repræsentant. Nulli autem juris beneficium denegent, à nullo præmium petant, ut prædictum est, vel recipiant, ut quis jus suum liberè persequatur, ut causa viduæ ad eos liberè ingrediatur, ut sint orphano & pupillo adjutores, ut nulli calumniam fieri patiantur, ut constitutiones & eorum edicta, juri & consuetudinibus approbatis, & communi utilitati sint convenientia. Coram eis nulla deprimat adversariorum potentia, sed agat quilibet, quod causa sua desiderat, & se temperet ab injuria, nec à limitibus judiciorum justorum avertat eos odium, favor, vel gratia, ut dici possit de eis, justus es, domine, & rectum judicium tuum, &c. Item sapientes oportet eos esse qui judicant, ut honestatem judicandi ab aliis non mendicent. Si quis autem minùs sapiens & indoctus sedem judicandi conscendere, & honestatem judicandi sibi præsumperit, ex alto corruit,

all causes, that the labour may be lighter for him, the burden being shared amongst several persons, he ought to choose from his kingdom men wise and fearing God, in whom is the truth of exposition, and who hate avarice, (which brings on covetousness,) and of them to constitute justices, viscounts, and other bailiffs and ministers, to whom may be referred as well questions as to doubtful rights, as complaints about injuries, and who will not turn aside from the path of justice either to the right hand or to the left hand on account of earthly prosperity or the fear of adversity, but will judge the people of God with equity, so that it may be said of them with the psalmist, that from their countenance the judgment of equity came forth, and will consider effectually, what is requisite according to necessity, what is expedient according to utility, what is lawful according to promise, what is becoming according to honesty. And the honour of the king loves such judgment, whose person they represent in their judgment and in judging. But let them deny to none the benefit of justice, let them ask from none and receive from none a reward, as already said, that each person may freely attain his right, that the cause of the widow may freely find access to them, that they be helpers to the orphan and to the ward, that they allow no one to suffer by quirks of the law, that their ordinances and edicts be in accordance with justice and approved customs, and general utility. In their presence let not the power of adversaries depress, but let each plead what his cause requires and restrain himself from injustice, nor let hatred, favour or grace turn them aside from the limits of just judgments, so that it may be said of them, thou art just, O lord, and thy judgment is right. Likewise they ought to be wise, who judge, that they may not have to beg from others correctness of judgment. But if any one ascends the judgment seat insufficiently wise and unlearned, and presume for himself correctness of judgment, he falls down from on high,

M 2

Azo, ad  
Institut.,  
p. 1043.

quia volare satagit, antequam pennas assumat, & qui tali potestatem judicandi dederit, perinde erit ac si gladium poneret in manum furientis. Item non solùm oportet judicantem sapientem esse, immo potentem, juxta illud Salomonis: Noli quærere fieri judex, nisi virtute valeas erumpere iniquitates, ne fortè extimescas faciem potentis, & ponas scandalum in agilitate tua.

2.  
De diffe-  
rentia jus-  
titiariorum.

Item justitiariorum, quidam sunt capitales, generales, perpetui & majores à latere regis residentes, qui omnium aliorum corrigere tenentur injurias & errores. Sunt etiam alii perpetui, certo loco residentes, sicut in banco, loquelas omnes de quibus habent warrantum terminantes, qui omnes jurisdictionem habere incipiunt præstito sacramento. Item sunt alii itinerantes de loco in locum, sicut de comitatu in comitatum, quandoque ad omnia placita, quandoque ad quædam specialia, sicut ad assisas tantùm & gaolas, & qui auctoritatem habere incipiant sine sacramento, cùm breve domini regis receperint de warranto. Sunt etiam justitiiarii constituti ad quasdam assisas, duas vel tres vel plures, qui quidem perpetui non sunt, quia expleto officio jurisdictionem amittunt.

f. 108 b.  
3.  
De potes-  
tate justitiariorum.

Est autem eorum potestas, quòd ex quo eis commissæ est causa, una vel plures, licèt simpliciter, extenditur eorum jurisdictio ad omnia, sine quibus causa terminari non potest, quantum ad judicium et executionem judicii. Et eodem modo, si causa fuerit incidens vel emergens et præjudicialis, ad alias verò res & alias personas, non possunt jurisdictionem suam extendere, nec de aliis cognoscere, quàm de hiis quæ in commissione cõtinentur, cùm fines mandati diligenter sint attendendi.

because he endeavours to fly before he has got wings, and he, who gives to such a person the power of judging, as it were puts a sword into the hands of a madman. Likewise a judge ought not only to be wise, but powerful, according to the saying of Solomon. Avoid seeking to be a judge, unless thou art strong in virtue to break through iniquities, lest by chance thou shouldst fear the face of the powerful man, and cause scandal in thine agility.

Likewise of justices some are chief, general, perpetual and supreme, resident by the side of the king, who are bound to correct the injuries and the errors of all the others. There are others perpetual, resident at a certain place, as at the bench, determining all arguments respecting which they have a warrant, all of whom commence exercising their jurisdiction by taking an oath. Likewise there are others itinerant from place to place, as from county to county, sometimes [to determine] all pleas, sometimes only special pleas, as for assises and gaols, and who begin to exercise authority without an oath, when they have received the king's writ of warranty. There are also justices appointed for certain assises, two or three or more, who are not perpetual, because, when their duty has been fulfilled, they lose their jurisdiction.

<sup>2.</sup>  
Of the  
difference  
of justices.

But their power is, that from the time when a cause, one or more, has been committed to them, although singly, their jurisdiction is extended to all things, without which the cause cannot be determined, as far as regards the judgment and the execution of the judgment. And in the same way, if a cause be incident or emergent or preliminary, but it has reference to other things or persons, they cannot extend their jurisdiction, nor take cognisance of other things than of those which are contained in their commission, since the limits of their mandate are to be diligently attended to.

<sup>3.</sup>  
Of the  
power of  
justices.

4.  
Qualiter,  
et quando  
finiatur  
eorum  
potestas et  
jurisdictio.

Et quamvis quidam eorum perpetui sunt, ut videtur, finitur tamen eorum jurisdictio multis modis, s. mortuo eo qui delegavit, vel mortuo eo sub cujus proprio nomine causa delegatur. Item cum delegans revocaverit jurisdictionem, vel alium dederit justitiarium, re integra ex toto vel ex parte. Item si ipse delegatus remittat causam ad ipsum delegantem, vel ad alium delegatum, ex causa, propter certum diem & certum locum. Item finitur, lata sententia & executione demandata, quia judex per iudicium redditum functus est officio suo, & iuratores liberati sunt à sacramento, nisi sit qui dicat, q̄ reddito iudicio, nihilominus possit justitarius iuratores revocare ad certificandum, vel inquirere de falso sacramento, secundum q̄ justitarius fuerit capitalis, vel itinerans generaliter ad omnes causas. Re vera, cum iudicium debito modo redditum sit, non potest justitarius, qui iudicium reddidit, illud postea corrigere vel mutare, eodem tamen die quo redditum est, supplere poterit in iis, quæ pertinent ad consequentias. Sed hoc ultimum locum habet in personis eorum, qui constituti sunt justitarii ad aliquas assisas specialiter capiendas, ut unam, duas vel plures. Et notandum in fine, quod nullus justitarius à domino rege sic delegatus, poterit aliquem sibi subdelegare.

## CAP. XI.

1.  
Qualiter  
constitu-  
endi sunt  
justitarii  
ad itin-  
erandum de  
comitatu

Ut autem de capitalibus justitiariis in banco residētibus ad preces taceamus, videndum qualiter constituendi sunt justitarii ad itinerandum de comitatu in comitatu, omnes causas generaliter vel ad certas, et postea, qualiter ad speciales, unam, duas vel plures. Si autem constitui debeant ad omnes causas gene-

And although some of them are perpetual, as it appears, their jurisdiction is terminated in many ways, for instance by the death of him who delegated it, or by the death of him under whose own name the cause has been delegated. Likewise when the principal has revoked the jurisdiction, or has appointed another justice, the thing being fresh either in whole or in part. Likewise if the delegate himself has resigned the cause to the principal himself, or to another delegate for a special cause on account of a certain day and a certain place. Likewise it is terminated, when the sentence has been passed and the execution ordered, for the judge has completed his duty by passing sentence, and the jurors are liberated from their oath, unless there be some one who says, that after sentence has been passed, the justice may call back the jurors to certify, or to make inquisition as to perjury, according as the justice is a chief justice, or itinerant generally to hear all causes. In reality, when sentence has been passed in due manner, the justice who has passed the sentence, cannot afterwards correct it nor change it, but upon the same day, on which he has passed sentence, he may supplement it in those matters, which appertain to the consequences. But this last has a place only in the persons of those, who have been appointed justices to hold certain special assises, as one, two, or more. And it is to be noted finally, that no justice delegated thus by the king, can sub-delegate another in his own place.

4.  
In what way and when their power and jurisdiction is terminated.

## CHAPTER XI.

But to be silent for the present concerning the chief justices resident in the Bench, let us see how justices are to be appointed to travel from circuit to circuit to hear all causes generally, or to hear certain causes and afterwards for special causes, one, two, or several. But if they are to be appointed for all causes generally, then

1.  
How justices are to be appointed to travel from county to county generally

f. 109. raliſ, tūc pſtito ſacram̃to, qualiter ſe gerere debeant in itinere ſuo, fiat cuilibet eorū breve ſpecialiter p ſe, & poſteā omnib⁹ in cōmuni. Forma autē brevis ſpecialis talis erit.

2. Et ſacramentum tale erit. Jurabit quilibet poſt aliū, quod rectam juſtitiā facient p poſſe ſuo in comitatu, in quib⁹ itineraturi ſunt, tam pauperib⁹ quā divitibus, & q aſſiſam ſervabunt ſecundū capitula ſubſcripta, & inferi⁹s exprimenda, & q faciēt omnes rectitudines & juſtitias, ſpectantes ad coronā domini regis. Et poſt ſacramentū ſuū dicatur eis expreſſè, q p poſſe ſuo intendāt ad faciendū cōmōdū regis.

3. Rex dilecto & fideſi ſuo A. ſalutē. Sciatis q conſtituimus voſ juſtitiariū noſtrū unā cum dilectis & fidelibus noſtris A. B. C. ad itinerandū p comitatum talem, vel cōm tales A. de omnib⁹ aſſiſis & placitiſ tā coronæ noſtræ q aliis, ſecundū q in brevi noſtro, de generali ſummonitione inde vobiſ directo, pleni⁹s cōtinetur. Et ideō vobiſ mandamus, roganteſ q in fide qua nobiſ tenemini, unā cum prædictiſ ſociiſ vſtriſ, ad hæc expedienda fideliter & diligenter intendatiſ, ut tam fidem vſtram q diligentia ad hoc appoſitam debeamus meritō commendare. Teſte &c. & hæc eadem forma fiat ſinguliſ eorū per ſe.

4. Rex dilectiſ & fidelibuſ ſuiſ A. B. C. D. ſalutem. Sciatiſ quōd conſtituim⁹ voſ juſtitiarioſ noſtroſ ad itinerandum in comitatu tali, de omnib⁹ placitiſ & aſſiſiſ tam coronæ noſtræ q aliis, quæ emeſerint, poſtquam juſtitiarii noſtri ultimō itineraverunt in cōm illo, & etiā de illiſ, quæ ſummonita fuerunt & atterminata



having taken an oath, as to the manner in which they ought to conduct themselves on their circuit, let there be made out for each of them a writ specially by itself, and afterwards a writ in common for them all. f.109.  
for all  
causes, or  
for special  
causes.

And the oath shall be of this kind. Each after the other shall swear, that he will do righteous justice as far as is in his power in the county, in which they are about to make circuit, as well to the poor as to the rich, and that they will keep the assise according to the articles underwritten and to be hereafter expressed, and that he will execute all righteousness and justice, which pertain to the crown of the lord the king. And after this oath let it be explained to them expressly, that they should endeavour as far as is in their power to promote the king's advantage. 2.  
Concern-  
ing the  
oath which  
the jus-  
ticiaries  
make, when  
they take  
upon them-  
selves the  
office of  
justiciary.

The king to his beloved and faithful A., health. Know ye that we have appointed you our justice, together with our beloved and faithful A. B. C. to make circuit through such a county or through such counties A. concerning all assises and pleas as well of our crown as others, according to what is contained more fully in our writ of general summons thence directed to you. And thereupon we command you, requiring you by the faith by which you are bound to us, together with your associates to apply yourself diligently and faithfully to expedite these things, so that we ought deservedly to commend your faith and diligence applied to this. Witness, &c.: and let this same form be addressed to each by himself. 3.  
A close  
writ for  
one of  
them.

The king to his beloved and faithful A. B. C. D., health. Know ye, that we have appointed you our justices to make circuit in such a county concerning all pleas and assises of our crown and others, which have come to light since our justices made their last circuit in that county, and likewise concerning those, which were sum- 4.  
A writ for  
all the jus-  
ticiaries  
together,  
which shall  
be their  
warrant,  
and shall

legetur in  
comitatu  
patens.

fuerunt, & non finita coram justitiariis nostris de banco apud Westm̃, vel corā justitiariis n̄ris itinerantibus qui ultimò itineraverūt in eodē cōm̃, de omnibus placitis, vel tantū de assisis novæ disseysinæ, mortis antecessoris capiēdis, vel gaolis deliberandis, ita q̃ omnes assisæ illæ & omnia placita illa, sint corā vobis in eodē statu quo remanserunt p̃ præceptū nostrū, vel p̃ præfatos justitios nostros itinerantes, vel p̃ præfatos justitios nostros de banco. Mandavimus enim vicecōm̃ n̄ro A. q̃ ad diem & locū, quem ei scire facietis, faciat coram vobis summonitiones fieri, & attachiamenta venire, cum brevibus assisarum & placitorum prædictorū. Et ideò vobis mandamus, rogantes q̃ in fide, qua nobis tenemini, ad hæc exequenda fideliter, &c. ut suprā.

5.  
Breve de  
eodem  
omnibus  
justitiariis  
simul pa-  
tens.

Rex A. B. C. salutem. Sciatis quòd constituimus vos justitios nostros &c. ut suprā. Et ideò vobis mandamus, rogantes quòd tali die conveniatis apud talem locum, facturi inde quod ad justitiam ptinet & in fide qua nobis tenemini ad negotia nostra ibidem expedienda ita fideliter &c. ut suprā. Mandavimus enim vic. nostro tali q̃ ad prædictum diem & locum faciat corā vobis summonitiones fieri, & attachiamenta venire cum brevibus assisarum prædictarum & placitorum prædictorum. In cujus rei testimoniū mittim⁹ vobis has litteras nostras patentes. Teste &c. Postea fiant brevia vic. clausa, quòd venire faciat coram justitiariis omnia placita, & de generali summonitione, omnib⁹ facienda tam majorib⁹ q̃ minorib⁹.

6.  
Breve  
clausum  
vicecomiti  
quod veni-  
ens faciat  
coram jus-  
titiariis

Rex vic. vel vicecomitib⁹ talib⁹ salutē. Præcipimus vobis, q̃ ad certos dies & loca, quæ vobis scire faciant dilecti & fideles nostri tales, vel aliter tales & socii sui, quos justitios nostros assignavimus ad itinerandum per cōm̃ vestros ad omnia placita, venire faciatis coram eis omnia placita coronæ nostræ, quæ placitata

moned and attermed, and not finished before our justices <sup>be read publicly open in the county.</sup> of the Bench at Westminster, or before our justices itinerant, who made the last circuit in the same county, concerning all pleas, or only to take assises of novel disseysine or of the death of an ancestor, or to deliver gaols, so that all those assises and all those pleas shall be before you in the same state in which they remained through our precept, or through our aforesaid justices itinerant, or through our aforesaid justices of the Bench. We have also commanded our viscount A. that on the day and at the place, which you shall make known to him, he cause summonses to be made before you, and attachments to come, with writs of assises and the pleas aforesaid. And thereupon we command you, requiring you that by the faith by which you are bound to us you attend to the faithful performance of the aforesaid, &c.

The king to A. B. C. health. Know ye, that we have appointed you our justices, &c. as above. And thereupon <sup>5. An open writ to all the justices together on the same subject.</sup> we command you, requiring you that on such a day you shall meet at such a place, to do there what pertains to justice, and in the faith by which you are bound to us to expedite our business there as faithfully as &c., as above. For we have commanded our viscount such a one, that on the aforesaid day and at the aforesaid place he cause summonses before you to be made, and attachments to come with writs of the assises aforesaid and of the pleas aforesaid. In testimony whereof we send you these our letters patent. Witness, &c.

The king to such a viscount or to such viscounts, <sup>6. A close writ to the viscount, that he cause all pleas to come before the justices.</sup> greeting. We enjoin you, that on certain days and at certain places, which our beloved and faithful so and so or otherwise so and so and their companions will make known to you, whom we have assigned as our justices to go circuit through your counties to hear all pleas, you shall cause to come before them all the pleas of our crown, 109

omnia  
placita.  
f. 109 b.

non sunt, & q̄ emerſerunt poſtquam juſtitiarii noſtri ultimò itineraverunt in partibus illis, ad omnia placita & ſimiliter omnia attachiamenta ad placita illa ptinentia, & omnes aſſiſas & omnia placita quæ poſita ſunt ad primam aſſiſam coram juſtitiariis, cum brevibus aſſiſarum & placitorum, ſicut pleniùs continetur in literis noſtris clauſis, quas ſingulis veſtrum aliàs inde miſimus. Teſte &c. ſcilicet de generali ſummonitione, quæ tales ſunt.

7.  
Breve de  
generali  
ſummoni-  
tione clau-  
ſum.

Rex vicecomiti ſalutem. Summoneas per bonos ſummonitores, omnes archiepiſcopos, epiſcopos, abbates, priores, comites, barones, milites & liberè teñtes de tota balliva tua, & de qualibet villa quatuor legales homines & præpoſiſi, & de quolibet burgo duodecem legales burgenses per totam ballivam tuam, & omnes illos qui coram juſtitiariis itinerantibus venire ſolent & debent, quòd ſint apud talem locum, tali die, anno regni noſtri tali, coram dilectis & fidelibus noſtris A. B. C. D. quos juſtitiarios noſtros conſtituimus, audituri & facturi præceptum noſtrum. Facias etiam venire tunc coram eiſdem juſtitiariis noſtris, omnia placita coronæ noſtræ quæ placitata non ſunt, & quæ emerſerunt poſtquam juſtitiarii noſtri ultimò itineraverunt in partibus illis ad omnia placita & omnia attachiamenta ad placita illa pertinentia, & omnes aſſiſas & omnia placita quæ poſita fuerunt ad primam aſſiſam coram juſtitiariis cum brevibus aſſiſarum, ita quòd aſſiſæ illæ & placita pro defectu tui vel ſummonitionis tuæ non remaneant. Facias etiam clamari & ſciri per totam ballivam tuam, quòd omnes aſſiſæ, & omnia placita quæ fuerunt attachiata & atterminata & non finita corā juſtitiariis noſtris de bāco, vel coram juſtitiariis noſtris qui ultimò itineraverunt in comitatu tuo de omnibus placitis, vel coram juſtitiariis noſtris illuc miſſis ad aſſiſas novæ diſſeiſinæ capiendas, & gaolas deliberandas, tunc ſint coram præfatis juſtitiariis noſtris apud talem locum, in

which have not yet been pleaded and which have come to light, since our justices made their last circuit in those parts to hear all pleas, and in a similar manner all attachments pertaining to those pleas, and all assises and all pleas which have been entered at the first assise before the justices, with the writs of the assises and of the pleas, as is more fully contained in our close writs, which we have sent to each of you otherwise. Witness &c.: namely [writs] of general summons, which are in such form.

The king to the viscount greeting. Summon by good summoners all archbishops, bishops, abbots, priors, counts, barons, knights, and freeholders of your entire bailiwick, and of each vill four lawful men and provosts, and of each borough twelve legal burghers through your entire bailiwick, and all those who are accustomed and ought to come before our justices itinerant, that they be at such a place on such a day in such a year of our reign, before our beloved and faithful A., B., C., D., whom we appoint our justices, in order to hear and execute our precept. Cause also to come then before the same our justices all the pleas of our crown which have not been pleaded, and which have cropped up after our justices last travelled in those parts, for all pleas and all attachments pertaining to those pleas, and all assises and all pleas which were brought at the first assise before our justices with the writs of assise, so that those assises and pleas may not remain through the failure of yourself or of your summons. Cause also to be proclaimed and known throughout your entire bailiwick that all assises and all pleas, which were attached and attermend and not finished before our justices of the Bench or before our justices, who last travelled in your county to hear all pleas, or before our justices there sent to hold assises of novel disseisin, and to deliver the goals, should then be brought before our aforesaid justices at such a place

7.  
A close  
writ of  
general  
summons.

eodem statu in quo remanserunt, p præceptum nostrum vel per præceptum justitiariorum nostrorum prædictorū itinerantium, vel per justitios nostros de banco. Summoneas etiā per bonos summonitores, omnes illos qui vicecomites fuerunt post ultimā itinerationem prædictorum justitiariorum nostrorum in partibus illis, q tunc sint ibidem coram prædictis justitiariis nostris itinerantibus cum brevibus assisarum & placitorum quæ tempore suo receperunt, & ad respōdendum de tempore suo, sicut respondere debēt coram justitiariis itinerantibus, & habeas ibi summonitores & hoc breve. Teste, &c. Aliquando verò cū justitii itinerare debent in diversis comitatibus, bene facere possunt summonitiones generales sub nomine suo proprio in prædicta forma, sic.

8.  
Breve,  
cum ipsi  
justitii  
fecerint  
summoni-  
tionem  
nomine  
proprio et  
per breve  
suum.

Talis & socii sui justitii itinerantes in tali comitatu vicecomiti, tali salutem. Mandamus vobis, ex parte domini regis, quōd summoneas per bonos summonitores omnes archiepiscopos, &c., omnia ut suprā. Facta igitur generali summonitione, ut prædictum est, videndum erit quando loquelæ quæ sunt in banco vel alibi incipient esse coram justitiariis itinerantibus, & esse desināt coram justitiariis de banco, vel aliis, cū possit summonitio fieri per multum tempus ante iter, & sciendum q non antequam justitii inceperint itinerare, quia benè poterit iter multipliciter impediri, revocari, vel suspendi, & unde semper dabitur dies partibus à justitiariis de banco, sub tali conditione, nisi justitii itinerantes prius venerint ad partes illas, & quo casu semper remanebunt placita illā in banco, quousque iter inceptum fuerit. Si autem datus fuerit dies ante summonitionem generalem partibus, & infra diem illum incipiat itineratio, retro trahetur dies illa ad diem itinerationis per generalem summonitionem, & desinit placitum coram justitiariis de banco. Sed quid dicetur de eo qui coram justitiariis de banco essoniatus

f. 110.

in the same state in which they remained, through our precept or the precept of our aforesaid justices itinerant, or our justices of the Bench. Summon likewise by good summoners all those who have been viscounts after the last journey of our aforesaid justices in those parts, that they be there before our aforesaid justices itinerant with the writs of the assises and the pleas which they received in their own time, and to answer concerning their own time, as they ought to answer before the justices itinerant, and have there summoners and this writ. Witness &c. But sometimes when the justices ought to journey in different counties, they may well issue general summonses under their own name in the aforesaid form, thus.

Such a one and his associate justices itinerant in such a county to such a viscount greeting. We command you on the part of the lord the king, that you summon by good summoners all archbishops, &c., as above set forth. A general summons having thus been made, it will have to be seen when the arguments which are in the Bench or elsewhere begin to be before the itinerant justices, and cease to be before the justices of the Bench or others, since the summons may be made a long time before the iter, and it is to be known that not before the justices have commenced their iter, because the iter may be in many ways hindered, revoked, or suspended, and thence a day will always be given to the parties by the justices of the Bench under such a condition, unless the justices itinerant should come beforehand to those parts, and in which case those pleas will remain in the Bench, until the iter has been begun. But if a day shall have been appointed before a general summons to the parties, and within that day the circuit shall have begun, that day shall be drawn back to the day of the circuit by the general summons, and the plea before the justices of the Bench ceases. But what shall be said of him, who has been essoined to the justices of the Bench on

8.  
A writ, when the justices themselves have issued a summons in their names and by their writ.

f. 110.

fuerit de malo lecti? fiat de eo secundum quod visus fuerit vel non visus, & si visus fuerit, tunc secundum quod languor fuerit ei adjudicatus, vel secundum quod fuerit ei malum transiens. Et si visus fuerit, si possit sine licentia surgere videndum, vel si non possit, à quo petenda sit licentia surgendi, utrum à justitiariis itinerantibus, vel de banco, vel si visus fuerit & habeat malum transiens, coram quibus debet comparere, vel si languor ei fuerit adjudicatus, coram quibus debeat testificari visus, vel si justitiiarii itinerantes, si in eodem comitatu jacuerit essoniatus, mittere possint ad ipsum ut faciat attornatum, cum essonium de malo lecti coram eis non habeat locum. Cum verò post generalem summonitionem itineris, non venerit quis liber homo, nee se essoniaverit de communi summonitione, licet placitum non habuit, nec fuit implacitatus primo die, pro defalta erit in misericordia, licet postmodum compareat, nisi rationabili de causa docuerit se esse impeditum, & si fortè se essoniaverit, nisi postea comparuerit, non valebit essonium, & idem erit si venerit, & sine licentia recesserit. Si autem constituantur justitiiarii ad assisas, & non ad omnia alia placita, sed ad placita specialia, sicut ad assisas omnimodas, ad gaolas deliberandas, & ad placita de dote tantum coram quatuor justitiariis, tunc fiat breve sub hac forma quatuor justitiariis patens omnibus simul.

9.

Item omnibus quatuor justitiariis simul, ubi constituuntur ad quædam specialia, et non ad omnia placita.

Rex dilectis & fidelibus suis A. B. C. D. salutem. Sciatis, quod constituimus vos justitiiarios nostros ad assisas novæ disseysinæ, mortis antecessoris, ultimæ præsentationis capiendas, & ad alia placita de dote, unde mulieres petentes nihil habent, generaliter tenenda, quicumque contra assisas prædictas terras vel advocaciones ecclesiarum deforciaverint. Vel sic: ad assisas



account of illness confining him to his bed? Let it be done towards him according as he has been seen or not seen, and if he has been seen, then according as it has been adjudged that he is languishing, or that his ailment is passing. And if he has been seen, it is to be seen whether he can leave his bed without leave, and if he cannot, from whom leave is to be obtained, whether from the justices itinerant, or from the justices of the Bench, and if he has been seen and has a passing ailment, before whom he ought to appear, or if it has been adjudged a languor, before whom it ought to be testified that he has been seen, or if the justices itinerant, if the person essoined is lying within the same county, may send to him that he may constitute an attorney, since an essoin confining him to his bed has no place before them. But when any freeman after a general summons of the iter has not come nor excused himself from the common summons, although he had no plea, nor was impleaded on the first day, he will be for his default liable to a fine, although he may afterwards appear, unless he has shown that he has been hindered by a reasonable cause, and if by chance he has excused himself, his excuse will not avail unless he shall have afterwards appeared, and it will be the same, if he has come and gone away without leave. But if they be appointed justices for the assises and not for all other pleas, but for special pleas, as for assises of all kinds, for gaol-deliveries and for pleas of dower only before four justices, then let an open writ issue under this form to all the justices together.

The king to his beloved and faithful A. B. C. D.,  
greeting. Know ye, that we have appointed you our  
justices to hold assises of novel disseysine, of the death  
of an ancestor, of a last presentation, and to hold gene-  
rally other pleas of dower, where women plaintiffs have  
nothing, [against those] whoever have, contrary to the  
aforesaid assises, seized by force lands or the advowsons  
of churches. Or thus: for the assises of the death of an

9.  
Likewise  
to all the  
four jus-  
tices to-  
gether,  
when they  
are ap-  
pointed to  
hear cer-  
tain special,  
and not all  
pleas.

mortis antecessoris & magnas assisas, & omnes juratas per præceptum nostrum summonitas coram justitiariis nostris ad primam assisam, vel coram justitiariis nostris apud Westmonaster. atterminatas, pterquam super illos qui profecti sunt in servitio nostro tali, & similiter ad gaolam deliberandam, tam de illis qui in prisiona nostra inveniuntur, quàm de illis qui per præceptum nostrum in custodia committuntur. Et ideò vobis mandamus, rogantes quòd ad diem talem & tali loco conveniatis, &c. ut suprà, de constitutione justitiariorum ad omnia placita: & de hoc statim fiat vicecoñ breve clausum in hac forma.

10.  
Breve clausum vicecomiti, quod venire faciat assisam.

f. 110 b.

Rex vicecoñ salutem. Sciatis, quòd constituimus dilectos & fideles nostros A. B. C. D. justitios nostros, ad assisas novæ disseysinæ, &c. ut suprà per omnia usque ad clausulam (& ideò) & tunc sic. Et ideò tibi præcipimus, quòd tali die venire facias coram eisdem justitiariis nostris apud talem locum omnes assisas novæ disseysinæ, mortis antecessoris, ultimæ præsentationis, magnas assisas & oñs juratas, & oñia placita de dote, secundum quod prædictum est, & quæ summonitæ sunt coram justitiariis nostris ad primam assisam, cum in partes illas venerint, vel coram justitiariis nostris apud Westmoñ atterminatæ, & omnia attachiamenta quæ pertinent ad gaolam deliberandam, vel alios in custodia positos deliberandos. Et summonneas per bonos summonitores, omnes illos qui vicecomites fuerunt postquam, &c. ut suprà. Teste, &c. Si autem constituentur justitii ad unam assisam novæ disseysinæ tantum, vel mortis antecessoris tantum, unam, duas vel plures, tunc fiat eis omnibus simul breve patens in hac forma.

11.  
Si autem constituentur qua-

Rex dilectis & fidelib<sup>9</sup> suis, A. B. C. D. salutem. Sciatis quòd constituimus vos justitios nostros, ad assisam novæ disseysinæ capiendam, quam A. arrama-

ancestor and the great assises and all juries summoned by our precept to the first assise before our justices, or prorogued before our justices at Westminster, except regarding those persons, who are travelling in our service of such a kind, and in like manner to deliver the gaol, as well of those who are found in our prison, as of those who by our precept have been committed to custody. And accordingly we command you, requiring you, that you should meet on such a day and at such a place, &c. as above stated concerning the appointment of justices for all pleas; and concerning this let there be made out for the viscount a close writ in this form.

The king to the viscount, greeting. Know ye, that we have appointed our beloved and faithful A. B. C. D. our justices for the assises of novel disseysine, &c. as above, and so on throughout until the clause ("and accordingly"), and then in this manner: "And accordingly we enjoin you that on such a day you cause to come before our justices at such a place all the assises of novel disseysine, of the death of an ancestor, of a last presentation, the great assises and all juries and all pleas of dower, according to what has been before said, and which have been summoned before our justices at the first assise, when they should come into those parts, or prorogued before our justices at Westminster, and all attachments which pertain to gaol delivery or to the delivery of others placed in custody. And summon by good summoners all those who have been viscounts since &c., as above. Witness &c." But if justices should be appointed for one assise of novel disseysine only, or of the death of an ancestor only, one, two, or more, then let there be issued to them all together an open writ in this form.

10.  
A close writ to the viscount that he cause an assise to come.  
f. 110 b.

The king to his beloved and faithful A. B. C. D., greeting. Know ye, that we have constituted you our justices to hold an assise of novel disseysine, which A. justices be

11.  
But if four knights

tuor milites  
justitiiarii  
ad unicam  
assisam  
capiendam  
novæ dis-  
seysinæ.

vit versus B. coram vobis per p̄ceptum nostr̄, de libero tenemento suo in tali villa, vel sic: quam A. arramavit versus B. coram justitiariis nostris ad primam assisam, cū in partes illas venerint, &c. Si autem constituentur tantū ad unam assisam mortis antecessoris, tunc sic. Sciatis, quōd constituimus vos justitiiarios nostros, ad assisam mortis antecessoris capiendam, quam A. arramavit versus B. de tanta terra cum pertinentiis in tali villa, & ideō vobis mandam⁹ quōd ad diem & locum, quib⁹ ad hoc intendere poteritis, vel quos duxeritis providendos, vel sic: quōd tali die, conveniatis apud talem locum ad assisam illam capiēdam, facturi inde quod ad justitiam pertinet, secund' legem & consuetudinem regni nostri Angliæ, salvis nobis amerciamentis inde provenientiibus, mandavimus enim vicecomiti nostro tali, quōd assisam illam, dictis die & loco, vel ad diem & locum quem ei scire facietis, coram vobis venire faciat, & in hujus rei testimonium mittimus vobis istas literas nostras patentes. Teste &c. & super hoc fiat vicecomiti breve clausum, quod respondeat formæ præcedenti per omnia in hac forma.

12.  
Breve de  
eodem  
vicecomiti  
clausum,  
quod ve-  
nire faciat  
assisam.

Rex vicecomiti tali salutem. Sciatis, quōd constitui-  
mus A. B. C. D. justitiiarios nostros ad talem assisam  
capiendam, vel talem quā talis arramavit, &c. ut suprā.  
Et similiter ad assisam mortis antecessoris quā talis  
arramavit, &c. ut suprā. Possunt enim plures assisæ  
una justitiaria contineri sicut una, si unus fuerit pe-  
tens vel querens, & sive plures ibi fuerint disseysinæ  
vel disseysitores, sive plures tenentes sive unus. Et  
ideō tibi præcipimus, quōd assisam illam, vel assisas  
illas ad prædictos diem & locum, vel ad diem & locum,

has brought against B. before you by our precept, concerning his free tenement in such a vill; or thus: which A. has brought against B. before our justices at the first assise, when they should come into those parts, &c. But if they be appointed only for one assise of the death of an ancestor, then thus: Know ye that we have appointed you our justices, to hold an assise of the death of an ancestor, which A. has undertaken to bring against B. concerning so much land with its appurtenances in such a vill, and therefore we command you that at the day and place, on and at which you can attend to this, or which you have thought fit to provide; or thus: that on such a day you meet at such a place to hold that assise, in order to do thereupon what pertains to justice, according to the law and custom of our realm of England, saving the fines thereupon accruing to us, for we have commanded such an one our viscount that he cause to come before you that assise on the said day and at the said place, or on the day and at the place which you shall make known to him, and in testimony of this thing we send you these our letters patent. Witness, &c., and thereupon let there be made out to the viscount a close writ, which shall answer to the preceding form in all respects, in this form.

The king to such a viscount, greeting. Know ye that we have appointed A. B. C. D. our justices to take such an assise, or such at which such an one has undertaken to prove his right, &c. as above. And in like manner for the assise of the death of an ancestor, at which such an one has undertaken to prove his right, &c. as above. For several assises may be contained in one commission of justices equally as one assise, if there be one claimant or complainant, and whether there be several disseysines, or persons who have committed a disseysine, and whether there be several tenants or more than one tenant. And therefore we enjoin you, that you cause to come before our aforesaid justices that assise, or those

appointed  
to hold a  
single  
assise of  
novel dis-  
seysine.

12.  
A close  
writ on the  
same to the  
viscount,  
that he  
cause an  
assise to  
come.

quem vobis scire facient, coram præfatis justitiariis nostris venire facias, &c. Teste, &c. Si autem assisa ultimæ præsentationis capienda sit coram talibus justitiariis, &c. sic: ad recognoscendum per sacramentum suum, quis advocatus tempore pacis præsentavit ultimam personam, &c. secundum formam brevis per omnia. Si autem ad assisam utrum, tunc sic: ad assisam capiendam, quæ summonita est coram vobis per præceptum nostrum, inter A. personam talis ecclesiæ petentem, & B. laicum, scilicet tenentem, vel è contrario: f. 111. ad recognoscendum utrum tantum terræ vel redditus cum pertinentiis in tali villa, sit libera eleemosina pertinens ad ecclesiam prædicti A. in laicum feodum prædicti B. vel è contrario: utrum tantæ terræ vel redditus cum pertinentiis in tali villa, sit laicum feodum prædicti B. vel libera eleemosina ipsius A. Si autem constituatur aliquis justitiarius de banco, vel alius & solus cōstituatur, tunc fiat ei breve patens de justitiaria in hac forma.

13.  
Si justitiarius  
banci solus  
constituitur,  
quod  
assumat.

Rex dilecto & fideli suo tali salutem. Scias, quod constituimus te<sup>1</sup> justitiarium nostrum unā cum iis, quos vobis duxeritis associandos vel assumendos, ad assisam novæ disseysinæ capiendam, quam A. arramavit corā vobis per præceptum nostrum versus B. & alios nominatos in brevi nostro originali de libero tenemento suo in tali villa, vel sic, ad capiendam assisam mortis antecessoris, vel aliam quamecunq, secundum formam brevis. Et ideò vobis mandamus, quòd ad diem & locum, &c. ut suprā, facturi, &c. salvis, &c. mandavimus, &c. in cujus, &c. & fiat breve vicecomiti super eodem clausum, quòd venire faciat assisam coram justitiariis in hac forma.

14.  
Breve vice  
comiti

Rex vicecomiti salutem. Questus est nobis talis, &c. & sic totum originale de verbo in verbum, usque: et

<sup>1</sup> "Sciatis, quod constituimus vos, &c.," MS. Rawl. C. 160.

assises at the aforesaid day and place, or at the day or place, which they shall notify to you, &c. Witness &c. But if an assise of last presentation is to be holden before such justices &c. in this manner, to recognise by his oath, what advowsoner in time of peace presented the last parson, &c., according to the form of the writ throughout. But if to an assise of "whether," then thus: to hold an assise, which has been summoned before you by our precept, between A. the parson of such a church the plaintiff, and B. a layman, forsooth the tenant, or the contrary; to recognise whether so much land or rent, with its appurtenances in such a vill, be free alms pertaining to the church of A. or a lay fee of the aforesaid B. or the contrary; whether so much land or rent with its appurtenances in such a vill be a lay fee of the aforesaid B. or free alms of A. himself. But if some justice of the bench, or another and a single one be appointed, then let an open writ of justiceship be issued to him in this form. f. 111.

The king to his beloved and faithful such an one, 13.  
greeting. Know thou, that we have appointed thee our justice together with those persons whom we have thought fit to be associated or assumed with you to hold an assise of novel disseysine, which A. has undertaken to bring before you in accordance with our precept against B. and others named in our original writ concerning his free tenement in such a vill; or thus: to hold an assise of the death of an ancestor, or any other whatsoever according to the form of the writ. And accordingly we enjoin you, that at such a day and place, &c. as above, with intent to do &c. saving &c. we have commanded &c., in testimony of which &c., and let a close writ issue to the viscount on the same subject, that he cause an assise to come before our justices in this form. If a justice of the Bench alone be appointed, that he may assume others.

The king to the viscount greeting. So and so has 14.  
complained to us &c., and so the original word for word A close writ to the

clausum  
de eodem.

tenementum illud esse in pace, usque ad certum diem, quem dilect<sup>9</sup>. & fidelis noster talis tibi scire faciat & interim, &c. & summoneas eos, &c. quòd sint coram præfato tali & sociis suis quos, &c. ad certum locum quem tibi scire faciat, &c. parati, &c. & sic fiet de aliis assisis. Et in quo casu contingit multotiens, quod aliqua de causa fit tali justitiario associatio alterius justitiiarii ad impetrationem disseysitoris fortè, ut captio assisæ differatur & in fraudem, & quo casu si talis venerit, bonū est, si autem non, nihilominus procedat assisa, quia plus habet autoritatis breve patens de capienda assisa, quàm breve clausum de associatione: nisi ita sit q mandetur expressè, quòd sine tali non capiatur. Si autem primò summonita fuerit assisa coram justitiariis fortè apud Westm̃, & constituantur postmodum justitiiarii in com̃ ut captio assisæ maturetur, tunc fiat breve in hac forma.

15.  
Breve, si  
de banco  
transferen-  
tur assise  
usque ad  
comitatum  
ad certos  
justitiiarios.

Rex A. B. C. salutem. Sciatis, quòd constituimus vos justitiiarios nostros ad assisam ultimæ præsentationis capiendam, quæ summonita fuit coram justitiariis nostris apud Westm̃ inter A. querentem & B. impedi-entem de ecclesia tali, & ideò vobis mandamus, &c. ut suprà. Mandavimus enim vicecomiti nostro tali, quod venire faceret coram nobis tali die, & tali loco, vel ad certos diem & locum quando ad hoc intendere poteritis, recognitores assisæ illius ad faciendā assisam illam, in eo statu & sicut venire debuerunt tali die coram justitiariis nostris apud Westm̃ ad idem faciend. Mandavimus etiam ei quòd scire faciat prædicto B. quòd tunc sit ibi auditurus assisam illam in eodem statu quo atterminata fuit coram justitiariis nostris apud West-



as far as: and that tenement was at peace up to a certain day, which our beloved and faithful so-and-so will notify to you and meanwhile &c. and summon them &c. that they be before such an one and his associates whom &c. at a certain place which he will notify to you &c. prepared &c. and so it shall be done concerning the other assises. And in which case it happens frequently, that for some cause there is made to such justice the association of another justice at the request of a disseysor, perchance that the holding of the assise may be deferred and fraudulently, and in which case, if such an one has come, it is well, but if not, nevertheless the assise shall proceed, because the open writ for holding the assise has more authority than the close writ for the association, unless it be that there is a mandate expressly, that the assise shall not be held without the associate justice. But if the assise has been at first summoned before the justices by chance at Westminster, and afterwards justices have been appointed in a county in order that the holding of the assise may be hastened, then let a writ be issued in this form.

The king to A. B. C. greeting. Know ye, that we have appointed you our justices to hold an assise of last presentation, which has been summoned before our justices at Westminster, between A. claimant and B. opponent concerning such a church, and therefore we command you &c. as above. For we have commanded our viscount so-and-so, that he cause to come before us on such a day and at such a place, or on a certain day or at a certain place, when you may be able to attend to this [business], recognisors of that assise to hold that assise, in the state and as they ought to have come on a certain day before our justices at Westminster to do the same. We have also commanded him that he make known to the aforesaid B. that he be then there to hear that assise in the same state in which it was prorogued before our justices at Westminster on

viscount  
upon the  
same.

15.  
A writ, if  
the assise  
be trans-  
ferred from  
the Bench  
to the  
county  
to certain  
justiciaries.

monasterium tali die, &c. non obstante eo, quòd idem dies datus fuit ipsi B. p. essionium suum, postquam defaultam fecerat coram eisdem justitiariis apud Westm̃: & sive venerit sive non, procedatis ad illam assisam capiendam, tum propter lapsum sex mensium, tum q. si præsens esset nihil dicere posset contra assisā, quare remaneret post p̃dictam defaultam q. fecit in præfata curia apud Westm̃. In cujus rei testimonium, &c. Teste, &c. Aliud breve de eodem clausum vic. dirigendum est in hac forma.

16.  
f. 111 b.  
Breve  
clausum  
de eodem  
vicecomiti  
dirigen-  
dum.

Rex vic. salutem. Scias, quòd constituimus tales justitiarios nostros ad assisam ultimæ præsentationis capiendam, quæ summonita fuit coram justitiariis nostris apud Westm̃ inter tales, ad recognoscendum quis advocatus, &c. & sic totum originale. Et idèò tibi præcipimus, quòd diligenter inquiras qui fuerunt recognitores ejusdem assisæ, & illos sine omni dilatione venire facias coram justitiariis nostris apud talem locum tali die ad faciendam recognitionem assisæ illius, sicut venire debuerunt coram justitiariis nostris apud Westmonasterium tali die ad idem faciend' constitutos. Scire etiam facias prædicto B. & sic deinceps per omnia sicut in brevi præcedenti usque ad clausulam (in cujus rei, &c.). Et habeas, &c. Teste, &c. Cùm autem assisa mortis antecessoris posita fuit aliquando coram talibus justitiariis in cōm, & post defaultam vel essionium vel diem datum vel warrantum vocatum posita fuerit coram justitiariis nostris itinerantibus, & primo die non venerit tenens, tunc summoneatur quòd sit coram talibus justitiariis itinerantibus per tale breve.

17.  
Si assisa  
transfera-  
tur a qua-

Rex vicecomiti salutem. Summoneas per bonos summonitores, &c. A. quòd sit coram talibus justitiariis itinerantibus, ad audiendam assisam mortis antecessoris,

such a day &c., notwithstanding that the same day was appointed to B. himself by his essoin after he had made default before the same justices at Westminster, and whether he shall have come or not, ye shall proceed to hold that assise, as well on account of the lapse of six months, as because if he were present he could say nothing against that assise, why it should be a remanet, after the aforesaid default which he made in the aforesaid court at Westminster. In testimony of which &c. Witness &c. Another close writ on the same subject is to be addressed to the viscount under this form :

The king to the viscount greeting. Know thou, that we have appointed such persons our justices to hold an assise of last presentation, which has been summoned before our justices at Westminster between such persons, to recognise which advowson &c., and so the whole original writ. And accordingly we enjoin you, that you inquire diligently who were the recognisors of that assise, and you cause them without any delay to come before our justices at such a place on such a day to make a recognisance of that assise, as they ought to have come before our justices at Westminster on such a day appointed to do the same thing. Make it known also to the aforesaid B., and so in order through all things as in the preceding writ, as far as the clause (in testimony of which thing &c.). And you should have &c. Witness &c. But when an assise of the death of an ancestor has been brought sometime before such justices in a county, and after a default or an essoin or a day given or a warrantor called has been brought before our justices itinerant, and on the first day the tenant has not appeared, then let him be summoned that he appear before such justices itinerant by such a writ.

16.  
f. 111 b.  
A close writ concerning the same to be addressed to the viscount.

The king to the viscount greeting. Summon by good summoners &c. A., that he be before such justices itinerant, to hear an assise of a death of an ancestor, transferred

17.  
If an assise be transferred

tuor justitiariis usque ad iter justitiorum extra comitatum, cum in comitatu incepta fuerit.

quam B. in curia nostra, coram talibus justitiariis nostris ad hoc constitutis, arramavit versus eundem A. de tanta terra cum pertinentiis in tali villa, ita quod assisa illa tunc procedat in eodem statu in quo fuit apud talem locum, & quando posita fuit coram præfatis justitiariis itinerantibus. Et venire facias coram eisdem justitiariis nostris itinerantibus apud prædictum locum C. D. E. recognitores ejusdem assise ad prædictum terminum, ad faciendam assisam illam, & habeas ibi nomina recognitorum & hoc breve. Teste &c. Si verò constituisse<sup>1</sup> debeant justitii ad aliquam inquisitionem faciendam, vel de contentionibus habitis inter aliquos de libertatibus<sup>2</sup>, vel de roberia<sup>2</sup> vel de aliis, sicut de injuriis & hujusmodi, si duo constituentur vel plures, fiat singulis eorum breve clausum in hac forma.

18.  
Breve de consuetudinibus justitiorum ad inquisitiones faciendas super contentionibus ad querelam.

Rex dilecto & fideli suo A. salutem, sciatis, quod constituimus vos justitiarium nostrum simul cum B. ad quandam inquisitionem faciendam inter C. querentem & D. super contentionibus inter eos ortis de talibus libertatibus, & de talibus occupationibus feodorum, & de quibuscumque aliis injuriis, roberia,<sup>2</sup> verberibus & plagis, & hujusmodi, de quibus contentio fuerit inter eos secundum formam litterarum nostrarum, quas inde misimus vicecomiti nostro tali, & ideo vobis mandamus, rogantes quatenus ad diem, quam prædictus vicecomes noster vobis scire faciat, accedatis apud talem locum ad inquisitionem simul cum prædicto B. & præfato vicecomiti nostro faciendam, ut diligentiam vestram & discretionem merito debeamus commendare. In cujus rei, &c. Teste, &c. Et fiat aliud breve consocio suo consimile & clausum, & etiam super eodem fiat breve vicecomiti clausum in hac forma.

<sup>1</sup> Constitui, MS. Rawl. C. 159.

<sup>2</sup> Robberia, MS. Rawl. C. 160. Roboria, id. 159.

which B. in our court before such our justiciaries appointed for that purpose, has undertaken to prove against the same A. concerning so much land with its appurtenances in such a vill, so that such assise may then proceed in the same state, in which it was at such a place and when it was brought before our aforesaid justices itinerant. And cause to come before our same justices itinerant at the aforesaid place C. D. E. recognitors of the same assise at the aforesaid term to make that assise, and have there the names of such recognisors and this writ. Witness &c. But if the justices ought to have been appointed to hold an inquisition either concerning contentions between certain persons respecting franchises, or concerning robbery, or concerning other things, such as injuries and such like, if two or more be appointed, let there be made out to each a close writ in this form.

The king to his beloved and faithful A., greeting. 18.  
 Know ye that we have appointed you our justice together with B. to hold a certain inquisition between C. the complainant and B. upon certain contentions, which have arisen between them concerning certain franchises and certain occupations of feuds, and concerning certain other injuries, robbery, blows and stripes, and such like, respecting which a contention has arisen between them, according to the form of our letters, which we have thereupon sent to so-and-so our viscount, and accordingly we command you, requiring you, that on the day on which our aforesaid viscount shall notify to you, ye go to such a place to hold an inquisition together with the aforesaid B. and our aforesaid viscount, so that we ought deservedly to commend your diligence and discretion. In testimony of which thing &c. Witness &c. And let another similar writ, also close, be issued to his fellow-associate, and also let a close writ be issued on the same subject in this form.

from four  
justiciaries  
to the cir-  
cuit of  
justiciaries  
beyond the  
county,  
when it  
has been  
begun  
within the  
county.

18.  
A writ  
concerning  
the cus-  
toms of  
the jus-  
ticiaries  
to make  
inquisitions  
upon con-  
tentions at  
the com-  
plaint [of  
any one].

19.  
Breve vice-  
comiti  
clausum  
super  
eodem.

f. 112.

Rex vicecomiti salutem, præcipimus tibi, quòd assumptis tecum dilectis & fidelibus nostris A. & B. quos ad hoc justitarios nostros cōstituimus, in propria persona tua accedas ad talem locum, & illic coram te & coram præfatis justitiariis nostris venire facias viginti quatuor de legalioribus & discretioribus militibus de cōm tuo per quos rei veritas, &c. & qui nec p̄dictos C. & D. aliqua affinitate attingant, vel qui aliquo modo nō sint essoniabiles, ad recognoscendū super sacramentum suum, si prædictus C. p̄dictum D. robbavit, vel aliam injuriam ei fecit contra pacem nostram, & ita q̄ oñia p̄cedant secundū querelam querentis. Et tunc sic. Et inquisitionem illam, vel inquisitionem q̄ inde feceris, venire facias coram nobis, vel scire facias nobis tali die vel sine dilatione. Et scire facias p̄dicto D. ad quem diē facere volueris inquisitionem illā, ut inde tempestivè p̄muniatur, & ut p̄dicta inquisitio in p̄sentia utriusq̄ p̄cedat, si voluerint interesse: & ita te habeas in hoc negotio, &c. Teste, &c. Et infiniti sunt casus, & formæ infinitæ quib⁹ constituuntur justitarii, secundū q̄ inferiùs videri poterit in multis locis. Sed hæc ad p̄sens sufficiant exempli causa.

## CAP. XII.

1.  
De modo  
et ordine  
proponendi  
actiones  
coram jus-  
titiariis, et  
de eorum  
officio.

In adventu justitiariorū ad omnia placita ex jurisdictione sibi delegata, p̄tinent ad eos audire querelas singulorū & petitiones, ut unicuiq̄ justitia fiat, & q̄ suum fuerit tribuatur. Et si sit qui putat se habere petitionem, actionibus debet experiri, quia nemo sine actione experitur, & hoc non sine brevi sive libello conventionali, quia nemo de libero tenemēto suo sine brevi vel

The king to the viscount, greeting. We have en-joined you, that having associated with you our beloved and faithful A. & B., whom we have appointed our justices for this business, you go in your own person to such a place, and there before yourself and before our aforesaid justices you cause to come twenty-four of the more legal and discreet knights of your county by whom the truth of the matter &c., &c., who do not touch the aforesaid C. & D. by any affinity, or who are not excusable in some manner, to recognise upon their oath if the aforesaid C. has robbed the aforesaid D. or has done any other injury to him contrary to our peace, and so that all things may proceed according to the complaint of the complainant. And then so : And cause that inquisition, or the inquisition which you thereupon have made, to be brought before us, or make it known to us on such a day and without delay. And notify to the aforesaid D. on what day you wish to hold that inquisition, that he may be forewarned in time, and that such inquisition may proceed in the presence of each, if they wish to be present ; and so conduct yourself in this business &c. Witness. And the cases are infinite and the forms infinite, in which justices may be appointed, according to what may be seen below in many places. But these things may suffice for the present by way of example.

19.  
A close writ to the viscount on the same subject.

f. 112.

## CHAPTER XII.

On the arrival of the justices it appertains to them to hear all the complaints and petitions of individuals on all pleas according to the jurisdiction delegated to them, that justice may be done to each, and that each may have his own. And if there be any one who thinks that he has a petition, he ought to proceed by actions, for no one proceeds without an action, and this not without a writ and a formal libel, because no one shall answer for his freehold or its appurtenances without a

1.  
Of the mode and order of propounding actions before the justices, and of their office.

ejus ptinentiis, nisi gratis voluerit, respondebit. Quòd si ad hoc injustè arctatus fuerit, subvenitur ei p tale breve dñi regis vicecomiti directum in hac forma.

2.  
Breve, ne  
quis im-  
placitetur  
sine brevi  
et pcepto  
domini  
regis.

Rex vicecoñ salutem. Præcipimus tibi, quòd non implacites vel implacitari pmittas talem de libero tene-  
mto suo in tali villa sine speciali pcepto nostro vel capitalis justitiarri nostri. Teste, &c. Et sicut non debet sine brevi respondere, ita nec debet sine iudicio disseysiri. Et dicitur ideò breve, quia rem de qua agitur & intencionem petentis paucis verbis breviter enarrat, sicut facit regula juris, q̄ rē q̄ est breviter enarrat, & ideò videtur quòd sine brevi sive libello non debet quis experiri in iudicio, ne mutari possit petentis intentio vel mod⁹ petendi. Item sine brevi nō debet quis experiri, nec tenens sine brevi respon-  
dere de ptiñtiis, non magis q de ipso teneñto, sicut de pastura & aliis de quibus vicecoñ & comitatus non habent recognitionem, sicut de placito namii vetiti, p servitiis & consuetudinib⁹, quia ubicunq, loquela de-  
ducta fuerit in curiam baronum vel aliorum qui liber-  
tates habent de averiis captis & detentis contra va-  
dium & plegiū, & querela pvenerit ad comitañ, si contentio fiat de terra, servitiis & consuetudinibus, pastura vel huiusmodi q̄ pertinent ad liberum tenem-  
tum sine brevi, remanebit loquela, & querens sibi pquirat si voluerit, & tenens semp in seysina more-  
tur. Et quoniam quandoq, competat uni actio unica contra unum, quandoq, plures contra unum vel plures, qui tenent in communi vel separatim & per se, quan-  
doq, competunt plures actiones vel una pluribus qui



writ, unless he is gratuitously willing. But if he be unjustly constrained to this, he is helped by a writ of this kind from the lord the king directed to the viscount in this form.

The king to the viscount greeting. We enjoin you 2.  
 that you do not implead nor allow to be impleaded such A writ that no one be impleaded without a writ and precept from the lord the king.  
 an one concerning his freehold in such a vill without our special precept, or that of our chief justice. Witness &c.  
 And as he ought not to answer without a writ, so he ought not to be disseysed without a judgment. And it is called a writ (a brief) for this reason, because it states briefly the matter at issue, and the claim of the petitioner in a few words, as a rule of law does, which states briefly the thing, what it is, and therefore it appears that without a writ or a libel no one ought to proceed in judgment, so that the claim of the petitioner or his mode of petitioning may not be changed. Likewise no one ought to proceed without a writ, nor ought the freeholder to answer without a writ concerning the appurtenances, no more than concerning the freehold, as concerning the right of pasture, and other matters, concerning which the viscount and the county have not recognition, as concerning a plea of forbidden distrain, concerning services and customs, for wherever the discussion has been brought into the court of the barons or others who have franchises concerning cattle taken and detained against surety and pledges, and the complaint has come before the county, if the contention be made about land, services and customs, pasture and such like which appertain to a freehold without a writ, the discussion shall remain, and the complainant shall seek [a writ] if he chooses, and the freeholder shall always remain in seysine. And since sometimes a single action alone may be brought by one person against one person, sometimes several against one or more who hold in common or separately and by themselves, and sometimes several actions or one action may be brought by several, who hold

f. 112 b. tenent in communi contra unum vel plures, quā quædam sunt pjudiciales, eò quod primo debent terminari secundum quod sunt criminales vel civiles, & si omnes criminales, tunc una major & altera minor, vel si una criminalis & altera civilis, vel si omnes civiles in rem vel in personam, & si in rem, vel super possessionem vel super proprietatem, ideò de ordine actionum & judiciorum, & q̄ actio debeat alteri præferri.

3.  
De ordine  
actionum.

Et inprimis sciendum, quòd si alicui plures competant actiones criminales contra unum vel plures, illa, q̄ major est, primò debet terminari, ne maleficia remaneant ipunita, & extingatur pœna, ut si de minori crimine priùs ageretur, sic extincta persona criminosa, extingueretur pœna in majori, sicut videri poterit, ut si quis accusatus fuerit de furti crimine, vel homicidii, & similiter de crimine læsæ majestatis & convictus, graviùs punitur crimen læsæ majestatis quàm crimen furti vel homicidii, quia ex uno sequitur quòd criminosus trahitur, frangitur, & suspenditur, ex alio non sequitur nisi tantum suspensio. Et ideò si de minori crimine priùs ageretur, ita extingueretur pœna in majori p parte, scilicet quòd non traheretur nec frangeretur, q̄ esse non debet. Si autem duæ vel plures cōpetant actiones contra unū, quā una criminalis sit & altera civilis, criminalis priùs debet terminari, & est ratio, quia si quis appellatus est de vita & mēbris, competit ei exceptio contra q̄libet agentem civiliter, quòd appellatus ei respondere non tenetur, antequā se defenderit in criminali, nec mutare poterit statum suum, quamdiu



in common, against one or more, of which some are prejudicial, inasmuch as they ought to be determined first according as they are criminal or civil, and if they are all criminal, then one is major and the other minor, or if one is criminal and the other civil or if they are all civil against a thing or against a person, and if against a thing, either regarding the possession or the property, therefore we must treat of the order of actions and of judgments, and which action ought to be preferred to another. f. 112 b.

And in the first place, it is to be known, that if a person is entitled to several criminal actions against one or more persons, that which is major ought to be determined first, lest misdemeanours remain unpunished and the penalty be extinguished, inasmuch as if the minor crime be first dealt with, the person of the criminal having been thus extinguished, the penalty would be extinguished in the major case, as may be seen, as [for instance] if a person be accused of the crime of theft or of homicide, and in a similar manner of the crime of high treason and be convicted, the crime of high treason is punished more severely than the crime of theft or of homicide, because it follows from the one that the criminal is drawn [on a hurdle], broken [on the wheel], and hung, whilst from the other it follows only that he is hung. And accordingly if the minor crime be first dealt with, the penalty in the major crime would be proportionately extinguished, for instance he would not be drawn nor broken, which ought not to be. But if two or more actions are to be brought against one person, of which one is criminal and the other civil, the criminal ought to be first determined, and the reason is, because if a person is called in question for his life or limb he may take exception against any one proceeding against him civilly, that he is not bound to answer his claim, before he has defended himself in the criminal action, nor can he change his own condition, as long as his condition is

3.  
Of the  
order of  
actions.



dubius fuerit status ppter crimen. Si autem contra unum duæ cōpetant actiones civiles, quā una in psonam & alia in rem, utraque simul poterit intentari, quia neutra aliam tollit vel excludit, ex quo sese inter easdem psonas compatiuntur, ac si unus illas contra plures intentaret. Si autem utraq, fuerit in rem, & utraq, super possessione, illa quæ fuerit super possessione ppria priùs terminari debet, sicut in assisa novæ disseysinæ, q illa quæ fuerit super possessione aliena, sicut assisa mortis antecessoris de morte alicuj<sup>9</sup> antecessoris. Si autem plures petierint seysinam ppriam versus unum, per assisam novæ disseysinæ, ultima seysina priùs erit determinanda, & sic fiat de pluribus quod de duobus. Et illud idem fiat de assisa mortis antecessoris, si plures petant versus unum per assisam. Si autem uni competant plures actiones civiles versus unum, tam super possessione propria & aliena, quàm super proprietate, petens habet electionem, quam primò voluerit intentare, & una electa, ad alias regressum non habebit pendente illa, si processerit secundùm ordinem actionum, & si ordine non servato processerit ad illas, postmodùm regressum non habebit, & unde si plures competant actiones versus unum, sicut assisa novæ disseysinæ de possessione ppria, & assisa de seysina antecessoris, & breve de ingressu, & breve de recto, primò (si velit ordinem servare, quòd una terminata possit ad alias habere ingressum) eligat actiones super possessione, & illam primò de seysina ppria, & postea de seysina aliena, & tunc demùm agat de proprietate, &

doubtful on account of the criminal charge. But if two civil actions are to be brought against one person, of which one is against his person, the other against his property, each may be proceeded with at the same time, because neither removes nor excludes the other, whence they are compatible with each other against the same persons, just as if one person brought them against several persons. But if both of them are against the property, and each respecting the possession of it, that which is concerned with one's own possession ought to be first determined, as in an assise of novel disseysine, before that which is concerned with another person's possession, as an assise of the death of an ancestor concerning the death of another's ancestor. But if several claim seysine of themselves against one person by an assise of novel disseysine, the last seysine will first have to be determined, and so let it be done with several, as with two. And let the same thing be done concerning the death of an ancestor, if several claim against one by an assise. But if one person is entitled to bring several civil actions against one person, as well concerning his own possession and the possession of another, as concerning the property, the claimant has the election which he will first proceed with, and one having been elected, he has no right of recourse to the others, whilst it is pending, if he has proceeded according to the order of the actions, and if, the order not having been observed, he shall have proceeded with them, he shall have afterwards no recourse to them, and hence, if he is entitled to bring several actions against one person, as an assise of novel disseysine concerning his own possession and an assise concerning the seysine of an ancestor, and a writ of entry, and a writ of right, first (if he wishes to observe order, that one having been determined, he may have an entry to the others) let him choose his action concerning the possession, and that first of all concerning his own seysine, and afterwards that concerning the seysine of another,

primò eligat actionem de ingressu, & postea super ipso recto, quia si primò elegerit agere super ipso recto, nunq postmodum regressum habebit ad inferiores, nisi ita sit q aliquando per narrationē revertatur breve de recto in breve de ingressu, quia quamvis teneat ordo, ut p̄dict' est, de actione in actionem ascendendo usq, ad breve de recto, nunquam tenebit ordo descendendo à superiore actione ad inferiorem. Item incidit quandoq, quaestio pprietatis in actionem intentatam super ipsa possessione, sive possessorium intentetur causa recuperandæ possessionis, sicut in assisa novæ dissey-sinæ, vel adipiscendæ possessionis, sicut assisa mortis antecessoris, & quo casu, simul quandoq, intentatur pprietas cum petitorio iudicio, quoad cognitionem possessionis, & non quoad pnuntiationem sup pprietate. Et sæpius inquirendum erit de ipsa pprietate, ut de possessione magis constare possit, & sic nihil cōmune habet possessio cum pprietate, quoad pnuntiationem, licèt quoad cognitionem, ut prædictum est, quia fortè aliter iudex non posset cognoscere de uno, s. de possessione, nisi priùs cognosceret de reliquo, s. de pprietate, pnuntiatio verò justitiiarii erit super possessione. Et notandum, quòd verbum possessionis quandoq, ponitur p re possessa, & quandoq, p restitutione.

4. Et quòd de possessione priùs agendum sit quàm de pprietate, & quòd causa possessionis est præmittēda, quāvis in fine debet pprietas prævalere, videri poterit manifestè. Quia esto, quòd justitiiarius priùs de pprietate & recto pnunciet, quàm de possessione inter aliquos, si postea de possessione cognoscere voluerit inter

Quod prius  
agendum  
est super  
possessione  
quam super  
proprie-  
tate.

and then at length let him deal with the property, and first choose an action of entry, and afterwards respecting the right itself, because if he should have elected first to proceed upon the right itself, he shall never have recourse to the inferior claims, unless it so be that sometimes a writ of right reverts in the narration to a writ of entry, because although the order is binding, as aforesaid in ascending from action to action up to a writ of right, the order in descending from a superior action to an inferior shall never bind. Likewise sometimes the question of property is incident to an action brought concerning the possession itself, whether a possessory claim is made for the sake of recovering possession, as in an assise of novel disseysine, or of acquiring possession, as in an assise of the death of an ancestor, and in which case sometimes the property is claimed with a petitory judgment, as regards the cognisance of the possession, and not as regards a pronounciation concerning the property. And frequently inquiry will have to be made concerning the property itself, that it may be more clearly ascertained respecting the possession, and so the possession has nothing in common with the property as regards the pronounciation, although as regards the cognisance, as aforesaid, because otherwise the judge may by chance not be able to hold cognisance of one, that is, the possession, unless he takes cognisance of the other, namely the property, but the pronounciation of the justiciary shall be respecting the possession. And it is to be noted that the word "possession" is sometimes used for the thing possessed, and sometimes for the restitution. f. 113.

And that possession must be dealt with prior to property, and that an action for possession must have precedence, although in the end property ought to prevail, can be clearly seen. For let it be that the justice pronounces concerning the property and the right prior to the possession between certain persons, if he should afterwards wish to take cognisance of the possession between the

4.  
That an action for possession takes precedence of an action for the property.

eosdem, nihil ageret, quia placitum de recto, quod præcessit, inter eosdem de eodem teneñto, recognitionem de petendo seysinam ppriam vel alienā de eodem teneñto extinguit inter eosdem, quia placitum de recto utrumq, jus determinat, tam possessionis quàm pprietatis. Ut de termino S. Trinitatis anno regni regis H. tertio, in cōm Eborū, assisa mortis antecessoris si Wilhelm<sup>o</sup> le Seneschal. Et idem erit si duo implacitaverint unum, unus videlicet p recognitionem in causa possessionis, & alius per breve de recto in causa pprietatis, suspenditur placitum p breve de recto, donec sciatur, cui debeat possessio remanere, ubicunq, fuerit placitum de recto, in curia dñi regis vel in cōm. Et si possessio p recognitionem tenenti remanserit, tunc demum pcedat placitum de recto inter eos: si autem tenens amiserit p recognitionem, tunc cadit breve de recto, & tunc agat petens v̄sus eum qui evicit p recognitionem. Sed cūm psequutio p breve de recto ita suspensa sit p recognitionem, petens p breve de recto semper apponit clameum suum, p quocunq, feratur sententia in causa possessionis. Et quòd priùs cognoscendum sit de possessione quàm de pprietate si violentia adhibita sit, pbatur, ss. ad legem Juliani<sup>1</sup> de vi publica, lege, Si de vi, ubi dicitur, quòd si de vi & possessione vel dominio quærat, antè cognoscendum est de vi, quàm de proprietate rei, & etiam priùs quæritur de vi quàm de jure domini sive possessionis. Item est & alia ratio, quòd qui rem petere voluerit, si cautè sibi pviderit, videat primò an aliqua ratione

Dig.  
XLVIII.  
t. vi. 5.  
§ 1.

<sup>1</sup> "Juliam" is the correct reading. "Jul. de vi publica. L. si de vi." MS. Rawl. C. 160.



same persons, he could do nothing, because the plea of right, which has preceded, between the same persons concerning the same tenement, extinguishes the recognition between the same persons for claiming seysine, either of one's own or of another's, concerning the same tenement, because a plea of right determines both rights, that of possession as well as of property. As in Trinity Term, in the third year of King Henry III. in the county of York, an assise of the death of an ancestor, if William the Seneschal. And the same will happen if two implead one, the one, for instance, in a cause of possession, and the other by a writ of right in a cause of property, the plea by the writ of right is suspended, until it be known with whom the possession ought to remain, wherever the plea of right may be brought, in the court of the lord the king or in the county. And if the possession remains with the tenant by the recognition, then let the plea of right proceed between them; but if the tenant has lost it by the recognition, then the writ of right takes effect, and then let the claimant proceed against him who has evicted [the other] by the recognition. But when the suit by a writ of right has been so suspended by a recognition, the claimant by a writ of right always appends his claim, for whomsoever the sentence may be pronounced in the cause of possession. And that cognisance should be held concerning possession prior to property, if violence has been used, is proved from the Digest on the Julian Law on the subject of public violence, in the passage which commences "If concerning violence," where it is said "if a question is raised respecting violence and possession or dominion, cognisance should be held concerning the violence before the proprietorship of the thing, and also an inquest is made respecting the violence before the right of dominion or of possession." Likewise there is another reason, why a person who wishes to claim a thing, if he provides cautiously for himself, should see first of all if he can by any

nancisci possit possessionem : quoniam commodius est possidere quàm petere. Multi enim sunt qui si possessionem habuerint, se defendere poterunt per exceptionem : si autem fuerint extra, vix aut nunquam fortè recuperabunt per actionem. De hoc autem quod dicitur, quod qui primò petierint<sup>1</sup> per breve de recto, quòd ad inferiores actiones descendere non possit, videndum f. 113 b. qualiter usus fuerit brevi de recto. Sunt quidam qui dicunt, quòd si in tantum usus fuit petens per breve de recto quòd tenens summonitus sit, & ad summonitionem essoniat, quòd hoc sufficit quòd regressum non habeat ad actiones inferiores, quia tunc inceptum est placitum cum effectu, per breve de recto. Quidam autem dicunt contrarium, quòd non est inceptum cum effectu, antequam summonitus comparuerit, & ad breve responderit, vel warrantum vocaverit, vel ulteriùs processerit. Sed re vera, sufficiat si fiat ut primò dictum est. Et hæc vera sunt, si breve, per quod actio incepta est, teneat in suo casu. Ut si assisa mortis antecessoris impetrata fuerit, & non jacuerit inter partes, pro non impetrata reputabitur, et idè descendere poterit petens ad assisam novæ disseysinæ ad seysinam propriam recuperandam. Eodem modo videtur quòd esse debeat, si quis usus fuerit & impetraverit parvum breve de recto, secundùm consuetudinem manerii domini regis, ubi impetrasse debuit magnum breve patens : si eo utatur, nihilominùs habebit regressum ad breve magnum ad petendum liberum tenementum suum, et è contrario : quia cùm in suo casu non sunt impetrata, idè nulla. Si autem utraque actio duorum versus unum super proprietatem, & ubi uterque agere poterit tam super possessione quàm super proprietate, sed ratione diversorum temporum : semper de ultima seysina priùs erit cognoscendum, et si de ultima seysina

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<sup>1</sup> "petierit," MS. Rawl. C. 160.

means obtain possession, since it is more convenient to possess than to claim. For there are many, who if they had possession, could defend themselves by an exception, but if they are out of possession will scarcely or never recover by an action. But concerning this which is said, that he who has first claimed by a writ of right, cannot descend to inferior actions, we must first see how he has used the writ of right. There are some who say that if a claimant by writ of right has used it so far, that the tenant has been summoned, and has been essoined to the summons, that this is sufficient to preclude him from having recourse to inferior actions, for then the plea by writ of right is effectually commenced. But some say the contrary, that it is not commenced with effect, before the person summoned has appeared and has answered to the writ and has called a warrantor or proceeded further. But in truth it is sufficient, if it be done as first said. And these things are true, if the writ, by which the action has been commenced, holds good in its case. As for instance, if an assise of the death of an ancestor has been obtained on request, and has not lain between the parties, it shall be regarded as not having been obtained, and therefore the claimant may descend to an assise of novel disseysine to recover his own seysine. In the same manner it appears that it ought to be, if any one has obtained and used a little writ of right, according to the custom of a manor of the lord the king, when he ought to have obtained a great open writ of right; if he uses it, he may nevertheless have recourse to a great writ to claim his freehold, and on the contrary, since as they have not been obtained in his own case, therefore they are null. But if there are actions of two persons against one respecting proprietorship, and where each may proceed as well respecting the possession as respecting the proprietorship, but by reason of different times, cognisance must always be held first concerning the last seysine, and if it can be ascertained as to the last sey-

f. 113 b.

constare non possit, tunc observetur quòd dicitur, quòd qui priùs appellat priùs agat, quod fallit in quatuor casibus. Cùm autem ab una parte plures actiones civiles proponantur versus unum vel plures, de pluribus rebus & diversis, poterit qui eas proponit, quam voluerit, præmittere, & omnes simul tractare. De hoc autem quod dicitur, quòd si plures alicui competant actiones, una debet experiri, et una electa ad alias non poterit recurrere pendente prima: sciendum est, quòd istud fallit in quatuor casibus. Primus casus est, quòd cùm quis plures habeat actiones, vel duas de una re, quæ fuerint contrariæ, si utrasque proposuerit, audiri non debet, magis quàm si contraria allegaret. Oportet igitur quòd unam istarum proponat, quam voluerit, quia sese non compatiuntur nec simul stare possunt, quia una excludit aliam; ut si quis peteret simul sortem & usuras, & terram in dominico & ad terminum. Secundus casus est, ut si illa quæ primò proponitur, pendeat ex alia, & quæ posterius proponi deberet per ordinem, ut si quis tanquam hæres petat debitum hæreditarium, antequam se probaverit hæredem, & postea vult inquiri, si sit hæres vel non. Præpostera est enim talis petitio. Item si quis petat fundum rei vendicatione, & statim vult percipere fructus vel colligere, antequam fundum acquisiverit, vel de fructibus agere, antequam prima actio terminetur de principali, repelli debet à secunda actione de fructibus. Primò enim debet constare de re principali per actionem primam, cujus esse debeat, & postea de ejus pertinentiis. Et unde videtur rationibus prædictis, quòd si quis petat

sine, then let it be observed according to what is said that he who first applies must first proceed, which fails in four cases. But when several civil actions are propounded by one party against one or several persons concerning several different things, he who propounds them may proceed with whichever he pleases first in order, and treat them all simultaneously. But concerning that which is said, that if any person is entitled to bring several actions, he ought to commence with one, and one having been elected, he cannot have recourse to the others pending the first, it is to be known that it fails in four cases. The first case is, that when a person has several actions or two concerning one thing which are contrary to one another, if he propounds both, he ought not to be heard, any more than if he alleged contrary facts. It is necessary therefore that he propound one of them, whichever he wishes, for they are not compatible with one another, nor are they consistent, because one excludes the other. As if a person should claim the capital sum and the interest, and the land in demesne and the land for a term. The second case is, as if that, which is first propounded, depends upon another and ought to be propounded last in order, as if a person claims an hereditary debt in the character of heir, before he has proved himself to be heir, and afterwards wishes an inquest to be held if he is heir or not. For such a petition is preposterous. Likewise if a person claims an estate, by vindication of the thing, and wishes immediately to enjoy the crops or to collect them, before he has acquired the estate, or to bring an action concerning the crops, before the first action on the principal matter is terminated, he ought to be rejected from his second action concerning the crops. For it ought first of all to be settled concerning the principal matter by the first action, whose property it ought to be, and afterwards concerning the appurtenances. And hence it seems for the aforesaid reasons, that if anybody

f. 114.

manerium cum pertinentiis, ad quod pertineat advocatio, sicut de pertinentiis, et pendente placito de manerio, antequam convincatur cujus esse debeat, contingat ecclesiam vacare, & ille qui petit manerium, præsenterit antequam principale terminetur, si placitare voluerit, non audietur per breve de quare impedit nec de ultima præsensatione, & plures sunt hujusmodi actiones, & infinitæ. Tertius casus est, cùm secunda sit præjudicialis primæ, q non est in primo casu, sed è converso. Ut si à te petam fundum Tycianum, quem tu possides & negas meum esse, & petam viam ad ipsum fundum Tycianum per fundum Sempronianū, qui Tycii est, non sum audiendus in hac secunda actione de via, quæ præjudicat primæ, & quia primò oportet discutere, cujus debeat esse fundus Tycianus, ad quem via pertinere debeat. Item si vendico à te aliquem fundum, & antequam convincatur, velim interim tecum agere de communi dividundo,<sup>1</sup> non sum audiendus, p eo quòd p hanc actionem de dividendo præjudicatur primæ, de principali recuperando. Quartus casus est, si tales sint actiones ppositæ, quòd una tollitur electione alterius, ut si agam in causa pprietatis p breve de recto, et postea velim recurrere ad aliam quæ sit de possessione, non possum, quia p hoc fieret præjudicium primæ, & tamen utraq, actio tam pprietatis quàm possessionis sub actione de pprietate continetur.

5.  
De actioni-  
bus vi  
bonorum  
raptorum.

Et notandum in fine, quòd cùm quis plures habeat actiones concurrentes de eadem re, una debet experiri, ut F. quòd metus causa, L. similiter, § si coactus, & C.

*Luc. D. L. IV. Tit. II*

<sup>1</sup> "dividendo," MS. Rawl. C. 160.

*quod metus causa. l. si coactus  
(21 § 6)*

claims a manor with its appurtenances, to which an advowson appertains, as part of the appurtenances, and whilst the plea is pending concerning the manor, before it is ascertained whose it ought to be, it happens that the church becomes vacant, and he, who claims the manor, has presented, before the principal question is determined, if he wishes to plead, he shall not be heard by a writ of "quare impedit," or by a writ of "last presentation," and there are several actions of this kind and without end. A third case is, when the second is præjudicial of the first, which is not in the first case, and conversely. As if I claim from you the Tycian estate which you possess, and you deny that it is mine, and I claim a road to the same Tycian estate through the Sempronian estate, which belongs to Tycius, I am not to be heard in this second action concerning the road, which prejudices the first, and because it ought first to be discussed, whose ought to be the Tycian estate, to which the road ought to pertain. Likewise if I claim from you any land, and before it is settled, I should wish meanwhile to proceed against you for a common division of it, I am not to be heard on this account, that by this action for a division prejudice is worked to the first action, concerning the recovery of the principal. The fourth case is, if such actions have been propounded, that one is removed by the election of the other, as if I proceed in a cause of proprietorship by a writ of right, and afterwards wish to have recourse to another which is about the possession, I cannot, because thereby prejudice would be worked to the first action, and nevertheless both actions, that of proprietorship as well as of possession, are contained under the action for the proprietorship. f. 114.

And it is to be noted at the end, that when a person has many concurrent actions for the same thing, he ought to proceed by one of them [only], as in the Digest "Quod metus causa." The Law beginning "Si coactus" 5. Concerning actions for goods taken by violence.

Dig. IV.  
tit. ii. 21,  
1.

de tributoria actione, L. quòd in hæredem § Eligere. Sed videtur contra F. quorum legatorum L. prima. Ubi dicitur quòd si duæ competant actiones, quas actor

Dig. XIV.  
tit. iv. 9,  
1.

compete actiones, eligere cogor, ut F. de tributoria L. q in hæredem, § Eligere. Si autem ignorem quæ mihi competat, tunc sub generali verbo, indefinitè possum pponere actiones, ut in L. contraria. Vel ubi ex confessione adversarii dependet mea actio, cogitur adversarius exprimere cùm fuerit interrogatus, utrum p hærede vel p possessore possideat, ut sciatur p medium, quæ actio mihi cōpetat actori: licèt titulū suæ possessionis dicere nemo cogatur. Ut C. de hæredibus L. cogi possessorem. Item si quis duo brevīa simul vel diversis temporibus impetraverit, dum tamen ille usus fuerit, electo uno brevi p q agere voluerit & alio prius usus fuerit, ex secundo agere non poterit, antequam se retraxerit à primo, ut de abbate de Ryvall & Petro de Sabaudia<sup>1</sup> coram rege. Et notandum quòd ubi duæ actiones de eadem re concurrunt, aut sunt rei psecutoria, aut pœnæ. Si autem rei tantum, tunc in electione actoris erit, quam voluerit eligere, ut p̄dictū est. Dig. XIX. tit. ii. 25. Et una electa &c. ut suprā. Ut F. locati, L. si merces, § Culpæ nomine. Si autem pœnæ, tunc aut ex uno facto vel diversis, ex uno & eodem facto, ut si quis aliquid p vim rapuerit, tenetur actione furti, & inter-

<sup>1</sup> "Petro de Sabaudia," mentioned below, fol. 159.

In Dig. XIV Tit IV § de Sabaudia ordine  
quod in hærede § Eligere non debet.



similarly and the Code de tributoria actione, the law beginning "Quod in hæredem," § eligere. But the contrary appears from the Digest, "Quorum legatorum," the first Law, where it is said that, if a person is entitled to two actions of which the plaintiff is aware, and he has avowed his intention to gain his cause by one action, it will be allowed him, and so he may indefinitely propound actions. The Solution. Where I am certain that I am entitled to two different actions, I am compelled to elect, as in the Digest "De tributoria," the law beginning "Quod in hæredem," § eligere. But if I am ignorant to what action I am entitled, then under a general word, I may propound actions indefinitely, as in the law beginning "Contraria." Or, where my action depends on the confession of my adversary, my adversary is compelled to declare, when he shall be interrogated, whether he possesses as heir or as possessor, so that it may be known through means thereof, to what action I am entitled, although no one is compelled to disclose the title of his possession. As in the Code "De hæredibus," the law beginning "Cogi possessorem." Likewise if a person has obtained two writs at the same time or at different times, whilst nevertheless he has used one writ, which he has elected by which he wished to proceed, and has used the other previously, he cannot proceed under the second, until he has withdrawn from the first, as in the case of the abbot of Ryvaux and Peter of Savoy before the king. And it is to be noted that where two actions concur concerning the same thing, they are either claiming the thing or a penalty. But if they are for a thing only, then it will be in the election of the plaintiff to choose which he wishes, as has been said above. And one having been elected &c. as above. As in the Digest "Locati," the law beginning "Si merces," § culpæ nomine. But if [in pursuit] of a penalty, then out of one act or different acts: out of one and the same act, as if any one has carried away a thing by violence, he

Dig.  
XLVII.  
tit. i.

f. 114 b.

Dig.  
XXXIX.  
tit. iv. 16,  
§ 13.

Decretum  
caus. III.  
l. 9. c. 8.  
Code IX.  
T. xxxv.  
11.

6.  
De ordine  
actionum  
in triplici.

dicto unde vi, in quo casu, una electa, non potest recurrere ad aliam, nisi quatenus minus consecutus fuerit ex una: ut F. de privatis delictis L. non utique, et F. de actionibus & obligationibus, ss. Si servum. Si autem ex diversis factis, tunc neutra tollitur per aliam, et ibi duæ actiones de eadem re concurrentes, una aliam non consumit, ut in Justic.<sup>1</sup> Item notandum,<sup>2</sup> quòd pœnalis actio non datur in hæredes, nec transit in eos, nisi lis fuerit contestata cum defuncto. Ad hoc facit F. de publicanis<sup>3</sup> & vectigalibus L. interdum, ss. pœnæ. Ubi dicitur, quòd pœnæ ab hæredibus peti non possunt, si non est quæstio mota vivo illo qui delinquit. Et hoc sicut in cæteris quoq; pœnis, ita & in vectigalibus. Item in causa criminis, & maximè si civiliter agatur. Et injuriarum, illustres personæ p pcuratorem agere possunt ut iii. Q. ix. in fine & C. de injuriis L. ultima. Item in eo, quòd pœnalis est, non datur in hæredes similésq; personas, nisi in quantum ad eos pvenerit. Item, si contra pupillum agatur, vel furiosum, ad damna inde non tenentur, nisi in quantum ad eos pervenerit ut suprâ: quia affectu carent, nisi pupillus fortè doli capax sit.

<sup>1</sup> "ut in Justic." This is the reading of MSS. Rawl. C. 160 and 159.

<sup>2</sup> "Item notandum." This pas-

sage down to "doli capax est" is omitted in MS. Rawl. C. 159.

<sup>3</sup> "publicanis." MS. Rawl. C. 160.

is liable to an action of theft, and an interdict "unde vi," in which case, after one has been elected he cannot have recourse to the other, unless as far as he has obtained less from one, as in the Digest De privatis delictis, the law "non utique," and in the Digest De actionibus et obligationibus, § si servum. But if from different acts, then neither is taken away by the other, and where there are two concurring actions concerning the same matter, the one does not consume the other, as in Justic. Likewise it is to be noted, that a penal action is not allowed against the heirs of a person, nor does it pass to them, unless the suit was in contest with the deceased party. This is supported by the Digest De publicanis et vectigalibus, the law "Interdum," § poenæ, where it is said that "penalties cannot be exacted from heirs, if no question has been raised during the lifetime of the delinquent. And this as in other penalties holds good in the case of the public taxes." Likewise in a cause of crime, and chiefly if there is a civil proceeding. And for libel, illustrious persons may proceed through a proxy as in the Decretum of Gratian, causa iii., q. 9, at the end, and the Code "De injuriis," the law at the end. Likewise in a case, which is penal, an action is not allowed against the heir and like persons, except for as much as may have come into their hands. Likewise if an action be brought against a ward or a mad person, they are not bound to make good damages, unless for as much as has come into their hands as above, because they are without intention, unless the ward is capable of deceit. f. 114 b.

Likewise a civil action, since it is sometimes a triple action and as it were mixed, namely, personal, penal, and in pursuit of a thing, as for instance for the restitution of things of which one has been despoiled, that a corporeal and immovable thing may be restored to the party despoiled of it, or that an incorporeal thing, as some right for instance, shall be replaced in its original state, as may be said of servitudes, as of the right of

6.  
Of the  
order of  
actions in  
triplicate.

& de jure pascendi in fundo alieno, & hujusmodi: benè poterunt hæc omnia unica actione terminari, sicut per assisam novæ disseysinæ, secundum diversas species disseysinarum. Personalis enim est, quia tantum datur spoliato, & competit contra spoliatorem in eo, quod pœnalis est. Est etiam pœnalis ppter delictum, quia injustè & sine judicio, & quandoque persequitur spoliatorem, si spoliator superstes sit, & in eo quod pœnalis est extinguitur p mortem utriusq, vel alterius ipsorum. Est etiam restitutoria tantum aliquando, & non pœnalis, quantum ad eos qui immunes sunt à delicto disseysinæ, quia pœnā sentire non debet, qui immunis est à culpa, secundum quod inferiùs dicitur de assisa novæ disseysinæ. Item ex uno facto injurioso plures possunt oriri actiones pœnales in causa civili, & uni competere vel pluribus contra unum vel plures, & omnes simul benè poterunt intentari, cum non sint contrariæ vel præjudiciales, sed sese compatiuntur, ut videri poterit, ut si quis nihil juris habeat in fundo alieno, nec aliquam servitutem, contra voluntatem domini, cujus fundus ille fuerit, fossatum levaverit, plures competere poterunt ex hoc domino fundi actiones, s. assisa novæ disseysinæ de libero teneñto, ex quo talis sic novum opus fecerit in fundo alieno, & rem alienam sic invito domino contractaverit. Ex hoc etiam poterit ei competere & alia, quod fossatum illud levatum est ad nocumentum liberi teneñti sui, eò fortè quod per fossatum illud poterit obstrui via aliqua. Item competere poterit ei & tertia, quia per fossatum illud poterit alicujus aquæ cursus injustè ad nocumtum domini divertiri, & quia ibi sunt plures injuriæ ex uno facto, p hoc poterit delinquens plurib<sup>9</sup>

pathway or of a driving road, or the right of pasturage on another's land, and such like ; all these matters may be well determined by a single action, as by an assise of novel disseysine, according to the different species of disseysines. For it is a personal action, because so much is given to the person despoiled, and it holds good against the spoiler in respect of its being penal. It is likewise penal on account of the delinquency, because it has been done unjustly and without a judgment, and sometimes it prosecutes the spoiler, if the spoiler is alive ; and in so far as it is penal, it is extinguished after the death of both, or of either of the parties. It is also sometimes only for restitution and not penal, as regards those who are free from the delinquency of the disseysine, for he ought not to suffer punishment, who is free from blame, according to what will be said below concerning an assise of novel disseysine. Likewise from one injurious act, several penal actions may arise in a civil cause, and may be brought by one or by several parties against one or several, and all may well be proceeded with simultaneously, when they are not contrary nor prejudicial, but are compatible with one another, as may be seen, as if any one has no right in another person's estate, nor any servitude contrary to the will of the lord, whose estate it may be, should he have raised a foss, several actions may be thereupon brought by the lord of the estate, for instance an assise of novel disseysine concerning a freehold, seeing that such a person has made a new work on another's ground, and so has dealt with another's property against the will of the owner. Thereupon also another action may be brought by him, that the foss has been raised to the nuisance of his freehold, on the ground perhaps that some road may be blocked up by that foss. Likewise a third action may be brought, that somebody's water-course may be diverted by that foss unjustly to the nuisance of the owner : and because several injuries thus result from one act, the delinquent

actionib<sup>9</sup> teneri uni, & aliquando pluribus, & poterit ille, cui injuriatum est, omnib<sup>9</sup> simul si voluerit experiri, vel vicissim, plures enim actiones poenales de eadem re sive de eodē facto concurrentes, una aliam non consumit, quia, quatenus minus consequitur p unam, consequi poterit si voluerit p aliam, si vicissim egerit & successivè. Sed cū plures competant actiones ex uno facto, ut prædictum est, videndū erit utrum omnes injuriæ unica actione possint terminari, quia cū lites

f. 115. restringendæ sunt, non expedit pluribus actionibus uti, cū una sufficiat pro omnibus, ad demolendum illud totum quod injuriosè factum est, & ad pristinum statum reformetur,<sup>1</sup> quòd res sit sicut solet esse & debet. Unde necessarium erit, quòd procedat assisa novæ disseysinæ, quòd fossatum omnino prosternatur, & fiat tenementum adeò planum sicut esse solet: per hoc enim poterit via obstructa aperiri, & aqua trestornata recipere cursum debitum, & sic possunt omnes injuriæ unica actione terminari & secundū diversitatem nocumentorum poterunt damna aestimari. Si autem primò tantūm ageretur de via obstructa, adhuc pro magna parte remanere poterit injuria de fossato & aqua trestornata, & si primò tantūm de aqua trestornata, adhuc remanere posset in magna parte injuria de fossato, & etiam omnino de via obstructa, & ideò melius est quòd per unicam actionem omnes illæ simul terminentur injuriæ, quàm per plures. Item ex uno delicto sive ex facto plures oriri poterunt actiones criminales & poenales, & competere pluribus sicut uni, & contra unum & plures, sive nascuntur ex uno facto vel pluribus, secundū quod plenius dicetur infra de placitis co-

Britton  
l. i. ch. xxx.  
§ 3.  
l. ii. ch.  
xxiii. § 6.

<sup>1</sup> "reformetur," the context seems to require "reformandum."

for that reason may be liable to several actions from one person, and sometimes from several persons, and he who has been injured may have recourse to them all, if he so wills, simultaneously, or in turns, for several penal actions about the same thing or the same act concurring, one does not consume the other, because inasmuch as he may obtain less by one, he may obtain [more] by another, if he wishes, if he proceeds in turns and successively. But when several actions may be brought upon one act, as has been said above, we must see whether all the injuries can be determined by a single action, for since lawsuits ought to be restrained, it is not expedient to make use of several actions where one will suffice for all to demolish the whole of that which has been done injuriously, and should be reformed in its pristine state, so that the thing be as it is accustomed and ought to be. Hence it will be necessary that the assise of novel disseysine proceed, that the foss be altogether levelled, and the freehold be made as plain as it used to be; for the obstructed way may be by this means opened, and the water turned aside may regain its due course, and so all the injuries may be terminated by a single action, and the damages may be estimated according to the diversity of the nuisances. But if the proceeding should be at first only for the obstruction of the way, the injury from the foss and the water turned aside may remain for the most part, and if it should be at first only for the turning aside of the water, the injury from the foss in a great part might remain, and likewise altogether that from the obstruction of the way, and therefore it is better that all these injuries should be terminated by a single action, than by several. Likewise from a single delinquency and a single act many criminal and penal actions may arise, and may be brought by several persons as well as by one, and against one or several, whether they arise out of one fact or several, according to what will be said more fully below concerning pleas of the crown, con-

f. 115.

ronæ, de appellis & pœnalibus actionibus. Item ex uno facto vel delicto plures possunt oriri actiones pœnales, & pluribus competere sicut uni, ut si cui injuria illata fuerit per illos qui sunt sub sua potestate, sicut sunt filius, filia, vel alii qui sunt de alicujus familia, & in servitio suo verberaverit, vulneraverit, & malè tractaverit contra pacem, competit ei quidem actio, qui ictus sustinuit & vulnera, et ipsam violentiam directa, ut consequatur suum interesse secundum æstimationem injuriæ. Competit etiam domino actio indirecta, quatenus suâ interfuit non caruisse servitiis famulorum & operibus servorum & hujusmodi. Competit etiam domino actio ex hoc, si tales verberati sunt vel pulsati in dedecus ipsius domini, etiam si servitio & operibus servorum non caruerit, & ita poterit interesse sua aliquando, ratione alterius istorum, & aliquando ratione utriusque, ut si dicat se nolle sustinuisse damnum pro tanto, nec pudorem vel dedecus pro tanto, conjunctim vel divisim. Sed videndum inter cætera quæ istarum sit præjudicialis, & si una dependeat ex alia, et videtur quòd sic: quia esto quòd serviens vel servus, cui violentia illata est, in probatione sua defecerit, licèt querela vera sit, videtur quòd per hoc extincta sit actio domini, quia si factum non probetur, quòd est principale, valere non debeat aliquid, quod dependeat ex eo, & proinde quòd talis non verberatur ad dedecus ipsius, nec ad damnum. Sed revera quamvis talis in probatione sua defecerit, nihilominus subesse possit verum, quòd ita fuit. Et unde si unus non probaverit, alius potest. Idem erit, si tales se retraxerint, vel sequi noluerint.

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cerning appeals and penal actions. Likewise from one fact or delinquency several penal actions may arise, and may be brought by several persons as by one, and if injury has been done by those who are under their power, such as are a son or daughter or others who are of any person's family, and in their service they have struck, wounded, and ill-treated any one against the peace he, who has suffered the blows or the wounds and the actual violence, may bring a direct action, that he may obtain his own interest according to the estimate of the injury. For the lord may bring an indirect action, inasmuch as it is his interest not to be in want of the services of his attendants and the labour of his serfs and such like. The lord may likewise bring an action on this account, if such persons have been struck or beaten to the disgrace of their lord, even if he should not have been in want of the services and the labour of his serfs, and so he may in his own interest sometimes, in respect of either of them or in respect of both, as if he shall say that he is unwilling to have sustained loss for so much, nor shame or disgrace for so much, conjointly or divisibly. But we must see amongst other things, which of them are prejudicial, and if one depends upon another, and it seems so; because let it be that a servant or a serf, to whom violence has been done, should fail in his proof, although his complaint is true, it seems that thereby the action of the lord is extinguished, because if the act is not proved, which is the principal thing, that which is dependent upon it ought not to avail, and accordingly that such a person is not beaten to disgrace him or to damnify him. But in truth although such a one should fail in his proof, nevertheless the truth may subsist, that it was so. And hence if one has not proved it, another may. The same will result if such persons withdraw themselves, or refuse to prosecute.

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INCIPIIT  
TRACTATUS SECUNDUS LIBRI TERTII,  
IN QUO TRACTATUR  
DE CORONA.<sup>1</sup>

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CAP. I.

1. Qualiter  
precedere  
debent  
justitii  
in itinere  
suo, et quo  
ordine. Facta coram justitiariis itinerantibus generali sum-  
monitione, ad certos diem & locum, quæ ad minus  
continere debet spacium xv. dierum, videndum erit in  
primis, qualiter pcedere debeat & quo ordine. Et  
sciendum quòd in primis incipere debent de placitis  
coronæ, in quib<sup>9</sup> terminantur actiones criminales, tam  
maiores quàm minores, nisi ipse dominus rex fortè in  
aliqua parte aliter duxerit faciendum. Et inprimis  
legantur brevia, quæ dant eis auctoritatem & potesta-  
tem itinerandi, ut sciri poterit de eorum auctoritate:  
quibus auditis, si justitiariis placuerit, quidam major  
eorum & discretior, publicè coram omnib<sup>9</sup> proponat  
quæ sit causa adventus eorum, & quæ sit utilitas iti-  
nerationis, & quæ cōmoditas, si pax observetur, &  
pponi solent verba ista p M. de Pateshull.<sup>2</sup> In primis  
de pace domini regis & justitia ejus violata, p murdri-  
tores & robbatores & burglatores, qui malitiam suam  
exercent die ac nocte, non solùm in homines, de loco  
in locum itinerantes, sed in homines in lectis suis dor-  
mientes, & quòd dñs rex mandat omnib<sup>9</sup> fidelibus suis,

<sup>1</sup> The headnote throughout this treatise in MS. Rawl. C. 160, is "Liber Tertius de Itineratione Justitiariorum."

<sup>2</sup> Martinus de Pateshull is stated by Matthew Paris to have died A.D.

1229, but our author cites an Iter of Martin de Pateshull in the county of Lancaster of a date as late as 16 H. III. (A.D. 1232), f. 50 b. vol. i. p. 399. See Introduction to vol. I. p. xv.

HERE BEGINS THE  
SECOND TREATISE OF THE THIRD BOOK,  
IN WHICH IS TREATED  
CONCERNING THE CROWN.

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CHAPTER I.

A general summons to appear before the justices itine-  
rant at certain days and places having been issued, which  
ought to contain at least a space of fifteen days, we must  
see in the first place in what manner and in what order  
proceedings should be held. And it is to be known in  
the first place, that they ought to begin with the pleas of  
the Crown, in which criminal actions, as well greater and  
less, are determined, unless the lord the king himself by  
chance has in some part ordered it to be done otherwise.  
And in the first place let the writs be read, which give  
them authority and power to make an *iter*, that it may  
be known respecting their authority, which having been  
heard, if it should please the judges, let some one of the  
older and more discreet in the presence of them all set  
forth the cause of their coming, and what is the utility  
of their itineration, and what is the advantage, if peace  
is observed, and these words are accustomed to be set  
forth by Martin de Pateshull. In the first place, con-  
cerning the peace of the lord the king and the violation  
of his justice by murderers and robbers and burglars,  
who exercise their malice by day and by night, not only  
against men travelling from place to place, but men  
sleeping in their beds, and that the lord the king com-  
mands all his faithful subjects, that in the faith by which

1.  
How the  
justiciaries  
ought to  
proceed  
on their  
circuit and  
in what  
order.

quòd in fide qua ei tenentur, & sicut sua salvare voluerint, efficax & diligens præsent consilium & auxilium, ad pacem & justitiam suam conservandam, & malitiam prædictorum tollendam & reprimendam, & hujusmodi plura. Quibus ppositis, debēt justitiiarii se transferre in aliquem locum secretum, & vocatis ad se quatuor vel sex vel plurib<sup>9</sup> de majorib<sup>9</sup> de cōm, qui dicuntur busones<sup>1</sup> cōm, & ad quorum nutum dependent vota aliorum, & sic inter se tractatum habeant justitiiarii ad invicem, & ostendant qualiter à dño rege & consilio suo sit pvisum, quòd omnes tam milites, quàm alii qui sunt quindecim annorum & ampliùs, jurare debent quòd utlagatos, murditores,<sup>2</sup> robbatores & burglatores non receptabunt, nec eis consentient, nec eorum receptatoribus, & si quos tales noverint, illos attachiari facient, & hoc vic. & ballivis suis monstrabunt, & si hutesium vel clamorem de talibus audiverint, statim audito clamore, sequātur cum familia & hominib<sup>9</sup> de terra sua. Ad q notari possit, quòd si quis feloniam fecerit, & statim capt<sup>9</sup> fuerit, levato hutesio, cessabit secta. Et unde si homo p infortunium oppressus fuerit, submersus, vel aliquo alio modo mortuus, vel interfect<sup>9</sup>, statim levetur hutesium, sed sequi non oportet de terra in terram, villa in villam, cūm malefactor captus sit, s. la bane.<sup>3</sup> Et postea traceam conducant per terram suam, & in fine terræ suæ illam monstrabunt dominis terrarum vicinarum: et sic quòd<sup>4</sup> fiat secta de terra in terram cum omni diligentia, donec malefactores comprehendantur, & quòd non remaneat tracea facienda, nisi impedimētum interveniat p noctem supervenientem, vel alia rationabili causa, et quòd illos quos suspectos habent p posse suo

f. 116.

<sup>1</sup> "Buzones," MS. Rawl. C. 160. "Barones," MS. Crewe. "Burgatores," MS. Glas.

<sup>2</sup> "murditores," omitted in MS. Rawl. C. 160.

<sup>3</sup> "la bane," from the Saxon *bana*, a murderer.

<sup>4</sup> "sic quod." MS. Rawl. C. 160. reads "quod sic."

they are bound to him, as they wish to preserve their own goods, that they should afford efficient and diligent counsel and advice to preserve his peace and justice, and to remove and repress the malice of the aforesaid, and more words of this kind ; which having been set forth, the justices ought to transfer themselves to some retired place, and having called to themselves four or six or more of the greater men of the county, who are called the "busones" of the county, and upon whose nod depends the votes of the others, the justices should thereupon have a consultation with them in turns, and explain to them how it has been provided by the king and by his counsel, that all as well knights as others, who are of fifteen years and more, ought to swear, that they will not harbour outlaws, murderers, robbers, or burglars, nor confederate with them or their harbourers, and if they should know of any such, they will cause them to be attached and declare it to the viscount and his bailiffs, and if they shall hear hue and cry respecting such people, immediately on hearing the cry they shall follow with their household and the men of their land. Upon which it may be noted, that if any one has committed a felony and has been forthwith captured, hue and cry having been raised, the pursuit shall cease. And hence if a man shall be suffocated by misfortune or drowned, and be dead in any other manner or be slain, let hue be raised forthwith, but the pursuit ought not to be carried on from land to land, from vill to vill, when the malefactor shall have been taken, that is *la bane*. And afterwards let them lead a track along their own land, and at the end of their land they shall show it to the lords of the neighbouring lands, and so that the pursuit be made from land to land with all diligence, until the malefactors are captured, and that there be no delay in making the track unless an impediment intervene through night coming on, or for some other reasonable cause, and that they shall arrest, as far as may be in their power, those

f. 116.

arrestabūt, non expectato mandato justitiiarii vel vic. & quòd inde fecerint, scire faciant justitiariis vel vic. Jurabunt etiam quòd, si aliquis venerit in villā vel burgum vel alibi, et emerit panem, cervisiam vel alia victualia, & suspectus habeatur quòd hoc sit ad op<sup>o</sup> malefactorum, ipsum arrestabunt, et ipsum arrestatum vic. vel ballivis suis liberabunt. Jurabunt etiam quòd nullum de nocte recipient in domū suam ad hospitandum, nisi benè not<sup>o</sup> sit, et si fortè ignotum aliquem hospitaverint, quòd non pmittent eum in crastino recedere ante clarum diem, et hoc sub testimonio trium vel quatuor proximorum vicinorum. Convocentur postmodum servientes & ballivi hundredorū, & per ordinē irrotulētur hundredarii<sup>1</sup> sive wapentakia et nomina servientū, quorum quilibet affidabit, quòd de quolibet hundredo eliget quatuor milites, qui statim veniant coram justitiariis ad faciendum præceptum dñi regis, et qui statim jurabūt, quòd eligent xii. milites vel liberos et legales homines, si milites non inveniuntur, qui neminem appellant, nec sunt appellati, nec malè crediti de pace infracta, de morte hominis, vel alio maleficio, & per quos negotia dñi regis possint meliùs et utiliùs expediri. Et nomina eorum xii. statim imbrevari faciant in quadā schedula et illā liberent justitiariis, qui etiā cum venerint, jurabunt in hac forma, prim<sup>o</sup> sic.

2.  
De sacra-  
mento duo-  
decim mili-  
tum elec-  
torum ad

Hoc audite justitiiarii, quòd ego veritatem dicam de hoc q à me interrogabitis ex parte dñi regis, et fideliter faciam id q mihi præcipientis ex parte dñi regis, et p aliquo non omittam, quin ita faciam p posse meo,

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<sup>1</sup> "hundredarii." MS. Rowl. C. 160 reads "hundreda."

whom they regard as suspected without waiting for the mandate of the justice or of the viscount, and that what they shall have done thereupon they shall certify to the justices or the viscount. They shall swear also that if any one shall come in the vill or the borough or elsewhere, and shall buy bread, beer, or other victuals, and shall be held to be suspected that he is doing this for the help of the malefactors, that they shall arrest him and deliver him arrested to the viscount or his bailiffs. They shall swear also that they will receive no one into their house at night to lodge there, unless he be well known to them, and if by chance they shall have received any one to lodge, they shall not allow him to go away on the morrow before clear day, and this upon the testimony of three or four of the next neighbours. Let there be convoked afterwards the serjeants and bailiffs of the hundreds, and let there be enrolled in order the inhabitants of the hundreds or the wapentakes, and the names of the serjeants, of whom each shall pledge his faith, that he will choose from each hundred four knights, who shall come forthwith before justices to perform the precept of the lord the king, and who shall forthwith swear that they will choose twelve knights, or free and loyal men if knights cannot be found, who have no suit against any one, and are not sued themselves, nor have evil fame for breaking the peace or for the death of a man or other misdeed, and through whom the business of the king may be better and more usefully expedited. And let them cause the names of those persons to be enrolled in a certain schedule, and let them deliver the schedule to the justices, who also, when they shall have come, shall swear in this form, in the first place thus :

• Hear this, ye justices, that I will speak the truth concerning this, which ye shall ask me on the part of the lord the king, and I will do faithfully that which you shall enjoin me on the part of the lord the king, and I will not omit for any one not to do so according to my

2.  
Concern-  
ing the  
oath of the  
twelve  
knights  
elected to

dicendum  
veritatem  
in placitis  
coronæ.

sic me Deus adjuvet, et hæc sancta Dei evangelia.<sup>1</sup> Et post eum jurabit quilibet aliorum separatim, et p se. Tale sacramentum quale A. prim<sup>o</sup> jurator, s. hic juravit, ego tenebo ex parte mea, sic me Deus adjuvet & hæc sancta &c. Et cùm ita juraverint omnes, legantur eis capitula p. ordinem, de quib<sup>us</sup> coram justitiariis respondebunt. Quib<sup>us</sup> sic auditis, statim dicatur eis, quòd de quolibet capitulo, separatim & p se sufficienter, distinctè & apertè respòdeant in veredicto suo, & illud habeant ad certum diem, & secretè dicatur eis, quòd si sit aliquis in hundredo vel wapentakio suo, qui malè creditus sit de maleficio aliquo, illum statim capiant si possint, si autem non, tunc secretò habere faciant justitiariis nomina talium, et omnium illorum qui malè crediti sunt in quadam schedula, et præcipietur vicec. quòd illos statim capiat, et captos venire faciat coram justitiariis, ut justitiiarii de iis faciant justitiam. Capitula verò, quæ illis duodecim proponenda sunt, quandoque variantur, secundùm varietatem temporum & locorum, & quandoque augentur, quandoque minuuntur. Sed tamen aliquid dicatur de capitulis (exempli causa <sup>2</sup>) qualiter per ordinem proponuntur.

Britton,  
i. ch. v. § 1.

3.  
Capitula  
de quibus  
duodecim  
respondere  
debent.

f. 116<sup>b</sup>.

Inprimis de veteribus placitis coronæ, quæ aliàs fuerunt coram justitiariis, & non fuerunt terminata. De novis placitis coronæ, quæ postea emerserunt tempore pacis,<sup>3</sup> p q notari poterit p capitula ista, quòd non erit

<sup>1</sup> "Dei evangelia." These words are not part of the original oath, which in MSS. Rawl. and Crewe ends with the words "ista sancta," that is, "these holy relics." See Statutum de Sacramento Ministrorum Regis. Statutes of the Realm, 1810, vol. i. p. 232.

<sup>2</sup> "exempli causa." The articles immediately following are in all probability not the articles of the Iter

of the king's justices used in any particular year, but "general articles" of which the details have been collected from articles used in various Itinera of the justices.

<sup>3</sup> "tempore pacis," omitted in MS. Rawl. C. 160. See the "Capitula Itineris," published in the Statutes of the Realm, Record Edition, 1810, vol. i. p. 233.



ability, so may God help me and these holy gospels of God. And afterwards they shall each of the others swear separately and by himself: The like oath which A the first juror has here sworn, I will keep on my part, so may God help me and these holy &c. And when they have all so sworn, let there be read to them the articles in order, concerning which they shall answer before the justices, which things having been heard, let it be told them forthwith that they shall answer distinctly and openly in their verdict upon each article, separately and sufficiently of itself, and shall have their verdict by a certain day, and let it be said apart to them, that if there be any one in their hundred or wapentake who is of evil repute respecting any misdeed, they shall seize him, if possible, but if that be not possible they shall cause the names of such persons to be given secretly to the justices, and the names of all persons who are of ill repute, in a certain schedule, and the viscount be enjoined to seize them forthwith, and to cause them when so seized to appear before the justices, that the justices may execute justice against them. But the articles, which are to be propounded to those twelve, are sometimes varied according to the variety of times and places, and sometimes they are augmented and sometimes they are diminished. But nevertheless let something be said concerning the articles (for example's sake) in what manner they are propounded in order.

In the first place concerning the ancient pleas of the Crown, which were before the justices at another time and were not determined. Concerning the new pleas of the Crown, which have afterwards emerged in the time of peace, regarding which it may be noted through those articles, that inquisition will not have to be made con-

3.  
Articles,  
concerning  
which they  
ought to  
answer.  
f. 116 b.

Britton,  
i. ch v.  
§ 7.

quærendum de placitis illis coronæ, quæ emerſerunt ante aliud iter juſtitiariorū, & quæ coram eis ppoſita non fuerunt. Et ſi aliquis illorū de hujusmodi fuerit accuſatus, inde habebit exceptionem, & etiam poſſunt juratores xii. de alio itinere argui de pjurio, ut de termino S. Michaelis annū regni regis H. nono incipiente decimo, de quodā Henrico Romband in comitatū Hertford. De illis qui ſunt in miſericordia domini regis, & non ſunt amerciati, ad q̄ videndum, qualiter quis ſit amerciandus. Et ſciendum, quòd miles & liber homo non amerciabitur niſi ſecundū modum delicti, ſecundū q̄ delictum fuit magnum vel parvum, & ſalvo contenemento ſuo. Mercator verò non niſi ſalva merchandiſa ſua; et villanus autem non niſi ſalvo wannagio<sup>1</sup> ſuo, & hoc p̄ judicium p̄borum hominum de viſneto, qui affidabunt ſimul cum ſerviente. Comitēs verò, vel barones non ſunt amerciandi, niſi p̄ pares ſuos, & ſecundū modum delicti, & hoc p̄ barones de ſcaccario, vel coram ipſo rege. Clericus vero non amerciabitur, ſecundū beneficium ſuum eccleſiaſticū, ſed ſecundū quantitatem laici feodi ſui, & ſecundū modum delicti. Et ad hoc fideliter faciendum affidabunt amerciatores, quòd neminem gravabunt p̄ odium, nec alicui deferent p̄pter amorem, & quòd celabunt ea quæ audiverunt.<sup>2</sup> De valectis & puellis, qui ſunt & eſſe debent in cuſtodia dñi regis, qui ſunt, et qui illos habent, & p̄ quem, & quantum terræ eorum valent. De dominab<sup>3</sup>, quæ ſunt & eſſe debent de donatione domini regis ſive ſint maritatæ ſive non, & ſi ſint maritatæ, quibus & p̄ quem, & quantū terræ illarū valent p̄ annū.<sup>3</sup> De eccleſiis, quæ

<sup>1</sup> "wannagio," MS. Rawl. C. 160.  
"waynagio," MS. Crewe.

<sup>2</sup> "audiverint," MS. Rawl. id.

<sup>3</sup> "per annum," omitted in MS.  
Rawl. id.

cerning those pleas of the Crown which have emerged before the other iter of the justices, and which were not propounded before them. And if any one of them has been accused of such like, he will thereon have an exception, and even the twelve jurors of the other iter may be charged with perjury, as in the term of St. Michael in the ninth and in the beginning of the tenth year of the reign of king Henry, concerning a certain Henry Romband in the county of Hertford. Concerning those who are at the mercy of the lord the king and have not been amerced, in regard to which it is to be seen, in what manner each is to be amerced. And it is to be known, that a knight and a free man shall not be amerced except according to the measure of the delict, according as it is great or small, and saving his tenement. Also the merchant in like manner saving his merchandise, and the villein saving his waggonage, and this by the judgment of honest men of the neighbourhood, who shall pledge their fealty with the serjeant. But counts and barons are not to be amerced except through their peers, and according to the measure of the delict, and this by the barons of the Exchequer or before the king himself. But a clerk shall not be amerced according to his ecclesiastical benefice, but according to the quantity of his lay fee and according to the measure of the delict. And the amercers shall pledge their fealty to do this faithfully, that they will aggrieve no one through enmity, nor show deference to any one through love, and that they will conceal those things which they have heard. Concerning valets and girls, who are or ought to be in the guardianship of the lord the king, who they are and who have control of them, and through whom, and how much their lands are worth. Concerning ladies of any manor, who are or ought to be of the donation of the lord the king, whether they be married or not, and if they have been given in marriage to whom and through whom, and how much their lands are worth by the year. Of churches, which are of the

Britton,  
i. ch. xix.  
§ 4.

sunt de advocacione<sup>1</sup> dñi regis, quæ ecclesiæ illæ sunt, & qui illas habent & p quem, & quantum valent p añ.<sup>2</sup> De eschaetis dñi regis, quæ sunt, & quis illas tenet, & p q servitium, tam de terris Normannorum, quàm de aliis, & si quæ teneantur sine warranto, capiantur in manum dñi regis.<sup>3</sup> De serjantiis dñi regis, quæ sunt, & qui illas tenent & p quem, & cujusmodi serjantiæ illæ sunt, & quantum valent & quæ servitia reddant.<sup>4</sup> De purpresturis factis sup dñm regem, sive in terra, sive in mari, sive in aqua dulci, sive infra libertatem, sive extra, sive alibi ubicunq. De mensuris factis & juratis p regnum, si servatæ sint sicut pvisum fuit, & si custodes mensurarum mercedes ceperint ab aliquo, quòd possint p alias emere & p alias vendere, quod quidem intelligatur de omnib<sup>5</sup> mensuris, tam ulnis quàm ponderibus, & si assisa de latitudine pannorum servata sit, sicut fuit pvisum, & si quis denarios ceperit p pannis cōtra assisā venditis. De vinis venditis in civitate, burgis, & aliis villis mercatoriis, ubi vina vendita sunt, contra assisam, & quis ea vendiderit,<sup>6</sup> et quot dolia per annum & per quot annos. De illis qui ceperunt denarios ab illis, qui extraneos hospitati sunt contra assisam inde factam anno præterito. De vic. & aliis ballivis dñi regis, qui tenuerunt placita coronæ, & quæ placita sunt,<sup>6</sup> & qui convenire faciunt hundreda sive wapentakia p inquisitionib<sup>9</sup> faciendis de morte hominis vel aliis placitis coronæ, & si ceperint misericordias pro defaultis, vel pro uthesio non levato vel non secuto. De usurariis Christianis mortuis, qui fuerunt, & q̄ catalla habuerunt, & quis ea habuerit. De catallis Judeor̄.

f. 117.

<sup>1</sup> "de donatione regis," MS. Rawl. C. 160.

<sup>2</sup> "et quantam valent per annum," omitted MS. Rawl. id.

<sup>3</sup> "capiantur in manum domini regis," omitted MS. Rawl. id.

<sup>4</sup> "et quæ servitia reddant," omitted MS. Rawl. id.

<sup>5</sup> "De vinis venditis contra assisam et quis ea vendiderit" is the reading of MS. Rawl. id.

<sup>6</sup> "sunt" omitted, MS. Rawl. id.

advowson of the lord the king, what churches they are, and who hold them, and how much they are worth by the year. Of escheats to the lord the king what they are, and who holds them and by what service, as well regarding the lands of the Normans, as other lands, and if any are held without a warrant, let them be taken into the hands of the king. Concerning serjeanties of the lord the king, what they are, and who holds them and through whom, and what kind of serjeanties they are, and how much they are worth, and what services they render. Concerning purprestures made upon the lord the king, whether upon the land or upon the sea or upon fresh water, whether within a franchise, or without it, or anywhere else whatsoever. Concerning measures made and sworn throughout the kingdom, if they have been preserved as provided, and if the keepers of the measures have taken payment from any persons, that they may buy by one measure and sell by another measure, which should be understood of all measures, as well as weights, and if the assise of the width of cloths is observed, as has been provided, and if any one has taken coin for clothes sold contrary to the assise. Of wines sold in a city, boroughs, and other mercantile vills, where wines are sold, contrary to the assise, and who has sold them, and how many barrels by the year, and for how many years. Concerning those, who have taken coin from those, who have entertained strangers contrary to the assise made in the past year. Concerning the viscount and other bailiffs of the lord the king, who have held pleas of the Crown and what pleas they were, and who have caused the hundreds or wapentakes to be convened to make inquisition respecting the death of a man, or other pleas of the Crown, and if they have taken amercements for defaults, or for not raising the hue or not following it. Concerning Christian usurers who are dead, who they were and what chattels they had, and who has had them. Concerning the chattels of Jews,

f. 117.

Britton,  
i. ch. v.  
§ 14.

Britton,  
i. ch. xxi.  
§ 7.

occisoꝝ, & vadiis & debitis & chartis eoꝝ, & quis ea habeat. De falsonariis & retonsoribus denarioꝝ. De moneta & chambio domini regis, sc. quis fecit mone- tam & chambium sine domino rege, vel justitiariis suis. De burglatoribus & malefactoribus & eoꝝ recep- tatoribus tempore pacis. De fugitivis, & quis<sup>1</sup> redie- rit post fugam sine warranto dñi regis. De utlagatis & fugitivis<sup>2</sup> & eoꝝ catallis, quis ea habeat & si qui utlagati redierint sine warranto. De hiis per quoꝝ terram utlagati, raptore,<sup>3</sup> vel burglatore transierunt, qui non fecerunt sectā post eos, sicut facere debuerunt. De mercatis remotis ab uno die in alium, sine licentia dñi regis, nisi sit<sup>4</sup> de die Dominica, & si quod mer- cat de novo levat fuit, sine warranto aut præcepto dñi regis.<sup>5</sup> De novis consuetudinibus levatis, sive in terra sive in aqua, quis eas levavit & ubi. De mer- cede capta pro blado & aliis catallis dimittendis, ne caperentur ad castella & hujusmodi,<sup>6</sup> & similiter de prisīs factis p vic. constabularium<sup>7</sup> vel alios ballivos contra voluntatem eoꝝ, quorū catalla illa fuerunt. De defaultis, scī. de iis qui summoniti fuerunt ad esse hic coram justitiariis & non sunt. Et qui non venerunt primo die. De gaolis deliberatis sine warranto domini regis, & similiter de illis qui tenuerunt placita de pba- toribus, sine warranto. De evasione latronum. De wrecko maris. De malefactoribus in parcis & vivariis, qui illi sunt, & eodem modo de columbariis, & qui columbas capiunt revertentes ad columbaria. De rapi- nis & prisīs factis extraneis, per quos hoc factum fuit, & quādo & ubi & in cujus potestate. De illis, qui non pmittunt ballivos dñi regis intrare in terras suas, ad sūmonitiones & attachiamenta, vel districtiones facien-

<sup>1</sup> "si quis," MS. Rawl. C. 160.

<sup>2</sup> "et fugitivis" omitted, MS. Rawl. id.

<sup>3</sup> "raptore" omitted, MS. Rawl. id.

<sup>4</sup> "sit" omitted, MS. Rawl. id.

<sup>5</sup> "sine præcepto domini Regis," MS. Rawl. id.

<sup>6</sup> "et hujus modi" omitted, MS. Rawl. id.

<sup>7</sup> "constabularios," MS. Rawl. id.

who have been slain, and their securities and debts and deeds, and who has them. Of falsifiers and clippers of coin. Concerning the mint and exchange of the lord the king, for instance, if any one has made a mint or an exchange without the lord the king and his justices. Concerning burglars and malefactors and their harbourers in time of peace. Of fugitives, and who has returned after his flight without the warrant of the lord the king. Of outlaws and fugitives and their chattels, who has them, and if any outlaws have returned without warrant. Of those, through whose land outlaws, robbers, or burglars have passed, who have not made pursuit after them, as they ought to have done. Of markets removed from one day to another, without the licence of the lord the king, except it be from the Lord's Day, and if any market has been set up anew without the licence of the lord the king. Of levying new customs, whether in land or in water, who has levied them and where. Of payment taken for releasing corn and other chattels, that they may not be taken to castles and such like, and in like manner of prises made by the viscount, constable, or other bailiffs against the will of those, whose chattels they were, for defaults, that is, from those who were summoned to be here before the judges and were not so. And those who have not come on the first day of gaol deliveries, without a warrant from the king, and likewise of those who have held pleas concerning approvers without warrant. Of the escape of thieves. Of wreck of the sea. Of malefactors in parks and fishponds, who they are, and of dovecotes, and who capture doves returning to their dovecotes. Of robberies and prises made against strangers, by whom this has been done, and when and where and in whose power. Of those who do not permit the bailiffs of the king to enter upon their land to make summonses and attachments or distrainments for the debts due

das, pro debitis dñi regis vel pro placitis, & aliis rebus sine speciali libertate. De ballivis, qui ceperunt dona vel denarios pro recognitoribus amovendis de juratis & assisis, & similiter de vic. & ballivis qui ceperunt redemptionem de valetis<sup>1</sup> integr̃ feod̃ militis tenentibus, vel viginti libratas terræ habentib<sup>2</sup>, ne milites fierent ad mandāt dñi regis, cū vic. & alii ballivi dñi regis inde p̃cept̃ haberent speciale, de talibus, plenæ ætatis existentibus, milites faciēdis. De vic. & aliis ballivis, qui placita coronæ & namii vetiti placitāt & terminant in coñ, hundredis, vel p sacrament̃ vel alio modo, cū nullam inde habeant potestatē sine speciali mandato dñi regis, & per breve suum, nisi tant̃ vic. qui est in hoc justitiarius dñi regis super injusta captione & detentione. De excessibus vic. & alior̃ ballivoꝝ, si aliquā litem suscitaverint occasione habendi terras vel custodias, vel perquirēdi denarios, vel alios pfectus, vel p q̃ justitia & veritas occultetur vel dilationem capiat. De vic. & aliis ballivis ambidextris, qui capiunt ex utraque parte. De thuthingis, hundredis, sive wapentakiis & aliis ballivis domini regis posit̃is ad firmā, tempore prædictorum vic. quantum valent, & p̃ quanto posita fuerunt quolibet anno temporibus prædictorum vicecomitum, & pro quanto modò posita sunt.<sup>2</sup> De pr̃sis domini regis in terra, sive in aqua dulci, vel salsa, & libertatibus spectantibus ad castella sua, sive ad comitatum, sive ad burgos suos, sive ad alia quæcunque loca, quæ sunt, & quantum  
f 117 b. valeant per annum, & quis ea occupaverit vel celaverit, vel detinuerit. De vicecoñ & aliis ballivis qui ceperunt denarios ab illis, qui rectati fuerunt de morte

<sup>1</sup> "vallectis," MS. Rawl. C. 160.

<sup>2</sup> "quantum valent, et pro quantum posita fuerunt quolibet anno temporibus prædictorum vice-

"comitum, et pro quanto modo

"posita sunt," omitted in MS. Rawl. id.



to the king or for pleas and other things without a special franchise. Of bailiffs who have taken gifts or money for removing recognitors from juries and assises, and similarly concerning the viscount and bailiffs who have taken redemption of service from valets holding a full knight's fee or having twenty pounds worth of land, that they may not do military service at the command of the king, when the viscount and other bailiffs of the lord the king have received a special precept to enroll for military service all such persons, being of full age. Concerning viscounts and other bailiffs, who hold pleas of the Crown and of forbidden distrain and determine them in the counties, hundreds, or by an oath or in some other way, when they have no power therein without a special mandate of the lord the king, and by his writ, except only the viscount, who is for this purpose the justice of the king concerning unjust caption and detention. Of the excesses of viscounts and other bailiffs, if they have excited any litigation by occasion of having lands or wardships, or of exacting money or other profits, whereby justice and truth are obscured or undergo delay. Concerning two-handed viscounts and other bailiffs, who take from both parties. Concerning tithings, hundreds, and wapentakes, and other bailiffs of the lord the king placed out to farm in the time of the aforesaid viscounts, how much they are worth and for how much they have been placed out for each year in the time of the said viscounts, and for how much they have been lately placed out to farm. Concerning the prises of the lord the king on land or in fresh water and salt water, and the franchises pertaining to his castles, whether as regards the county or his boroughs, or any other places, what they are and how much they are worth a year, and who has occupied them or concealed them or detained them. Concerning viscounts and other bailiffs who have taken money from those who have been attached for the death of a man, that they should

hominis, ut dimitterent eos per plevinam, cū non essent replegiandi sine speciali p̄cepto domini regis. De vicecoñ & aliis ballivis, qui imprisonaverunt illos qui rectati fuerunt de latrocinio per indictamentum vel appellum probatoris, & illos in priona detinuerunt quousque haberent de illis redemptionem, cū possent & deberent per legem terræ replegiari, sine aliqua redemptione, vel si à talibus redemptionem ceperunt ne imprisonarentur. De vicecomitibus & aliis ballivis, qui bis vel pluries denarios ceperunt ab aliquo, ac si pluriesset amerciatus, cū amerciatus non esset nisi semel. De vicecoñ & aliis ballivis, qui distrinxerunt plures unum nomen habentes pro pluribus amerciamētis, ubi non fuit amerciatus nisi unus tantū. De vicecoñ & aliis ballivis qui distrinxerunt aliquem ad payandum & faciendum<sup>1</sup> plus, q̄ id ad quod fuit amerciatus per summonitionem scaccarii. De ballivis qui faciunt cervisias suas, quas quandoq̄ vocant Sothale<sup>2</sup> quandoque Filctale,<sup>3</sup> ut pecunias extorqueant ab eis qui sequuntur hundreda sua & ballivas suas, & de illis similiter qui, licet cervisiam non faciant, blada tamen colligunt in autumno, agnos & alia prætectu ballivæ suæ, per quod pauperes gravant & molestant. De cattallis extraneorum de potestate regis Franciæ existentium, dum rex fuit in Vasconia,<sup>4</sup> quo devenerunt, &c. De denariis captis pro defaultis per ballivos de iis qui non venerūt ad summonitionem vicecomitis, quis eos ceperit & quantum. De iis qui levaverunt warrenniam sine sufficienti warranto. De iis qui manuceperunt

<sup>1</sup> "pacandum," MS. Rawl. C. 160, "et faciendum" being omitted.

<sup>2</sup> "Sothale." This is probably a misprint for "Scothale," which is the reading of MS. Glas. and Rawl. C. 160. "Scotale" is the reading of MS. Crowe.

<sup>3</sup> "Filetale." Such also is the

reading of MS. Rawl. C. 160, whereas "Filecale" is the reading of MS. Glas., and "Ildale" of MS. Crowe.

<sup>4</sup> "in Vasconia." This may refer to the absence of king Henry III. in Gascony in 1243. He returned on the 25th Sept. 1243, landing at Portsmouth.

dismiss them by a plevin, when they ought not to be released on pledges except under a special precept from the king. Concerning the viscount and other bailiffs, who have imprisoned those who have been attached for robbery by an indictment or the accusation of an approver, and have detained them in prison, until they obtained from them redemption money, when they ought to have been by the law of the land released on pledges, without any redemption money, or if they have taken redemption money from such persons that they might not be imprisoned. Of viscounts and other bailiffs who have taken twice or several times money from any person, as if he had been amerced several times, when he has only been amerced once. Of viscounts and other bailiffs, who have distrained several persons having one name for several amercements, where only one person has been amerced. Of viscounts and other bailiffs, who have distrained any one to pay and do more than that which he was amerced by the summons of the exchequer. Concerning bailiffs who make their own ales, which they call *Sothale* and sometimes *Filctale*, that they may extort from those who do suit to their hundred or bailivry; and concerning those likewise who, although they do not make ale, nevertheless collect corn in the autumn, lambs, and other things under pretext of their bailivry, by which they aggrieve and molest the poor. Of the chattels of foreigners, being of the power of the king of France, when the king was in Gascony, whither they have gone to, &c. Of money taken for defaults by bailiffs from those who have not come to the summons of the viscount, who has taken them, and how much. Of those who have raised a warren without sufficient warrant. Of

habendi aliquem coram justitiariis in adventu ipsorum, & non habuerunt eum primo die. De iis qui retraxerunt brevia & alteri parti vendiderunt, p quod dñs rex amisit id quod ad ipsum inde ptinebat. De thesauris inventis, &c.<sup>1</sup> De felonibus damnatis & suspensis alibi, q corā justic. ad omnia placita, ad quorum manus catalla devenerunt, & qui terras (si quas habent) teneāt, & à quo tēpore, & quant̃ valent per añ. De iis qui currunt in alienis warrennis sine warranto dominoꝝ. De vic. & aliis ballivis domini regis qui ceperint mercedem, p vigiliis constitutis & non observatis.

## CAP. II.

1. Rex<sup>2</sup> dilectis & fidelibus suis ballivis de Hastings<sup>3</sup> salutem. Præcipimus vobis quòd omni occasione postposita, sitis apud Shipwey<sup>4</sup>, ad talem diem coram dilectis & fidelibus nostris talibus, & illuc tunc venire faciatis viginti quatuor de legalioribus & discretioribus baronibus de Hastings,<sup>5</sup> & alios, sicut venire solent & debent ad placitum de Shipwey, ad respondendum coram præfatis justitiariis nostris de capitulis subscriptis. De veteribus<sup>6</sup> placitis coronæ, quæ aliàs fuerunt

Breve de generali summonitione in itinere justitiariorum itinerantium apud Shipwey in com. Kanc. infra libertatem

<sup>1</sup> "De thesauris inventis." Here the text ends of the articles in MS. Rawl. C. 160. After those articles of inquiry two other collections of articles are inserted in MS. Rawl., the first being entitled "Item nova capitula de tempore regis Edwardi filii regis Henrici tertii," and the second, "Item capitula tantum gentia prima Statuta Westm. in anno regni regis Edwardi filii regis Henrici tertio," after which comes the king's writ addressed to the bailiffs of Hastings. The Arti-

cles of Edw. I. will be annexed in an Appendix.

<sup>2</sup> A writ of a like tenor, summoning the barons of Hastings to appear at Shipwey before Martin de Pateshull and his associate justiciaries is preserved amongst the Close Rolls of the eleventh year of King Henry III. Rot. Claus. xi. Henr. III. m. 4, p. 213.

<sup>3</sup> "Hastynes," MS. Rawl. C. 160.

<sup>4</sup> "Shipweye," MS. Rawl. id.

<sup>5</sup> "Hastinges," MS. Rawl. id.

<sup>6</sup> "Imprimis de veteribus," MS. Rawl. id.

those who have been sureties to produce any one before the justices on their coming, and have not produced him on the first day. Of those who have withheld writs and have sold them to the other party, whereby the lord the king has lost that which pertained to him therefrom. Of treasure found, &c. Of felons condemned and hung elsewhere than before the justices for all pleas, into whose hands their chattels have come and who has their lands (if they have any), and from what time, and how much they are worth by the year. Concerning those who course in others' warrens without a warrant from the lords. Of viscounts and other bailiffs of the lord the king, who have taken pay for watches appointed and not observed.

## CHAPTER II.

The king to his beloved and faithful bailiffs of Hastings greeting. We enjoin you that postponing all occasion of delay you be at Shipwey at such a day before our beloved and faithful so and so, and there cause to come twenty-four of the more loyal and discreet barons of Hastings and others, as they are accustomed and ought to come to the pleading at Shipwey, to answer before our aforesaid justices concerning the under-written articles. Concerning the old pleas of the Crown,

1.  
A writ of  
general  
summons  
on the iter  
of the jus-  
tices itine-  
rant to  
Shipwey,  
in the  
county of  
Kent, with-  
in the  
liberty of

f. 118.  
Quinque  
Portuum.  
Item capi-  
tula.

coram justitiariis apud Shipwey, & nō fuerūt termināta. De novis placitis coronæ nr̃æ q̃ infra libertatē vestrā emerserunt tēpore pacis, postq̃ justitiiarii ultimō itinera-  
raverunt apud Shipwey. De iis qui sunt in misericor-  
dia dñi regis & nō sunt amerciati. De ecclesiis q̃ sūt  
de advocacione dñi regis, q̃ ecclesiæ illæ sūt, & qui  
illas habēt, & p̃ quē, & quant̃ valent p̃ anñ. De assi-  
sis pannoꝝ, si servatæ sint sicut p̃visum fuit, & si quis  
denarios cepit p̃ pannis contra assisā venditis. De  
eschaetis dñi regis, q̃ sunt, & qui illas tenent, & per q̃  
servitiū, tam de terris Normannoꝝ q̃ de aliis, & si q̃  
teneantur sine warrāto, capiātur in manū dñi regis.  
De illis qui robbaverunt in terris vel in aqua post  
pacē clamatā. De purpresturis factis super dñm regem,  
sive in terra sive in mari sive in aqua dulci, sive  
infra libertatem sive extra, sive alibi ubicunq̃. De  
mensuris factis & juratis p̃ regñ, si servatæ sint sicut  
p̃visum fuit, & si custodes mensuraꝝ mercedē ceperunt  
ab aliquo, quōd possit p̃ alias emere & p̃ alias vēdere:  
q̃ quidē intelligatur de oñb⁹ mēsuris tā ulnis q̃ pōde-  
rib⁹. De vinis venditis, &c. De thesauro, &c. De  
catallis Frācoꝝ,<sup>1</sup> &c. De falsonariis,<sup>2</sup> &c. De burgla-  
torib⁹, &c. De mercatis,<sup>3</sup> &c. De chābio,<sup>4</sup> &c. De  
fugitivis, &c. De mercede, &c. De novis consuetudi-  
nib⁹,<sup>5</sup> &c. De defaltis, &c. De gaolis,<sup>6</sup> &c. De rapi-  
nis, &c. De navibus captis in guerra & traditis p̃ Wil-  
de Wrothehā,<sup>7</sup> cui tradebantur, & quis illas habeat vel

<sup>1</sup> "De catallis Francorum vel  
"Flandrensiū inimicorum nos-  
"trorum, quis eas habeat." Rot.  
Claus.

<sup>2</sup> "De falsonariis et retonsoribus  
"denariorum." Rot. Claus.

<sup>3</sup> "De mercatis remotis de uno  
"die in alium diem sine licentia  
"nostra, nisi sit de die Dominica."  
Rot. Claus.

<sup>4</sup> "De escambio monete nostre,

"quis illud fecerit sine licentia nos-  
"tra." Rot. Claus.

<sup>5</sup> "De novis consuetudinibus  
"levatis in terra vel in aqua, quis  
"eas levavit, et ubi." Rot. Claus.

<sup>6</sup> "De gaolis deliberatis sine war-  
"ranto." Rot. Claus.

<sup>7</sup> "Per Willielmum de Wrotham"  
is the reading of Rot. Claus. xi.  
Henr. III. William of Wrotham a  
famous sea-captain was the keeper

which have been at other times before our justiciaries the Cinque  
 at Shipwey and not determined. Concerning the new Ports.  
 pleas of our Crown, which have arisen within your fran- Likewise  
 chise in time of peace, after our justices have last articles.  
 held an iter at Shipwey. Of those who are at the f. 118.  
 mercy of the lord the king and have not been amerced.  
 Of churches which are of the advowson of the lord the  
 king, what those churches are and who holds them, and  
 through whom, and how much they are worth a year.  
 Of the assises of cloths, if they have been observed as  
 they have been provided, and if any one has taken money  
 for cloths sold contrary to the assise. Of the escheats  
 of the lord the king, what they are and who holds them;  
 and by what service, as well respecting the lands of the  
 Normans as other lands, and if any are held without a  
 warrant let them be taken into the hand of the lord the  
 king. Concerning those who have robbed on land or  
 water after peace was proclaimed. Of purprestures  
 made upon the lord the king whether on land or on sea  
 or on fresh water, whether within or without a franchise,  
 or elsewhere wheresoever. Of measures made and sworn  
 throughout the kingdom, if they have been preserved as  
 provided, and if the keepers of the measures have re-  
 ceived pay from any one, that he may buy by others or  
 sell by others, which is to be understood of all measures  
 whether ells or weights. Of wines sold, &c. Of treasure,  
 &c. Of the chattels of Frenchmen, &c. Of forgers, &c.  
 Of burglars, &c. Of markets, &c. Of exchange, &c. Of  
 fugitives, &c. Of pay (received), &c. Of new customs,  
 &c. Of defaults, &c. Of gaols, &c. Of plunders, &c. Of  
 ships taken in war and delivered up by William of  
 Wrotham, to whom they were delivered up, and who

quid de illis actū sit. De illis qui vendiderunt naves vel maeremiū ad naves faciendas inimicis patris dñi regis & suis contra phibitionem patris ipsius dñi regis. Faciatis etiam venire corā eisdem justitiariis nris ad pfať terminiū oīa placita & oīa attachiamenta, q̄ venire & terñ debent & solēt corā justitiariis placita teñtib⁹ apud Shepwey.<sup>1</sup> Teste, &c. Eodē modo & per eadē verba scribatur ballivis de Romual, ballivis de Heya, ballivis de Dover & ballivis de Sandwyz, ita q̄ quilibet eoř portuū habeat literas p se in p̄dicta forma. Et quoniā sēpius contentio est inter hoīes p̄dictoř portuū, & homines de Gernemuth & de Donwiche, fiat breve vic. Norff. & Suff. in hac forma.

Rex vic. Norff. & Suff. salutē. Sciatis q̄ suñneri fecim⁹ ad talē diē apud Shepwey,<sup>1</sup> oīa placita de quinq; portub⁹ sicut teneri debent & solēt corā justitiariis apud Shipwey. Et ideo tibi p̄cipim⁹, q̄ hoc sciri facias hominib⁹ de Jernemewe & ballivis de Donewiz, ita q̄ si aliquis cōqueri voluerit de aliquo qui sit de libertate vel infra libertatem quinq; portuū, tunc sit apud Shipwey corā p̄fatis justitiariis nostris querelā suā p̄positur⁹ & justitiā inde recepturus. Teste, &c.

## CAP. III.

De crimine læsæ majestatis et suis specibus. Cum sint quædam crimina capitalia, quæ inducunt corporalem pœnam, quandoque ultimum supplicium, quandoque membrorum truncationem, secundum quod fuerint majora vel minora, & quorum quædam sunt publica & quædam privata, & publicorum quædam

f. 118 b.

of the king's ports, and died in the second or third year of Henry III. It is probable that this writ was the earliest issued to the barons of Hastings after the conclusion of "the general war" at the commencement of the reign of Henry III., and soon after the death of

William of Wrotham, who was archdeacon of Taunton, A.D. 1204. He was the keeper of the king's galleys for many years during the reign of king John.

<sup>1</sup> "Shipweye" is the reading throughout the Close Rolls.



has them, and what has been done with them. Of those who have sold ships or timber to make ships to the enemies of the father of the lord the king and of the king himself, against the prohibition of the father of the lord the king himself. Cause also to come before our same justiciaries at the aforesaid term all pleas and all attachments which ought and are accustomed to come and be determined before our justices holding pleas in Shipwey. Witness, &c. In the same way and in the same words let it be written to the bailiffs of Romsey, to the bailiffs of Hythe, to the bailiffs of Dover, and the bailiffs of Sandwich, so that each of them have letters for himself in the aforesaid form. And since there is often contention between the men of the aforesaid ports and the men of Yarmouth and of Dunwich, let a writ go to the viscounts of Norfolk and of Suffolk in this form.

The King to the viscounts of Norfolk and of Suffolk greeting. Know ye that we have caused to be summoned at such a day to Shipwey all the pleas of the Cinque Ports as they ought and are accustomed to be held before the justices at Shipwey. And therefore we enjoin you that you make this known to the men of Yarmouth and the bailiffs of Dunwich, so that if any body wishes to complain of any body, who is of the franchise or within the franchise of the Cinque Ports, he may then be at Shipwey before the aforesaid our justiciaries to propound his complaint and to receive justice thereupon. Witness &c.

2.  
A writ to the viscounts of Norfolk, and of Suffolk that they should notify the men of Yarmouth and of Dunwich.

### CHAPTER III.

Since there are certain capital crimes, which bring on corporeal punishment, sometimes the last punishment, sometimes the mutilation of a limb, according as they are greater or less, and of which some are public and some private, and of public crimes some bring on the

1.  
Of the crime of high treason and its species.  
f. 118 b.

maiores pœnam inferunt, propter personam contra quam præsimitur, sicut est crimen læsæ majestatis, ut si contra personam ipsius regis sit præsumptum, quod quidem crimen omnia alia crimina excedit quoad pœnam, idè primò dicendum est de hoc crimine læsæ majestatis. Habet enim crimen læsæ majestatis sub se multas species, quarum una est, ut si quis ausu temerario machinatus sit in mortem domini regis, vel aliquid egerit vel agi procuraverit ad seditionem<sup>1</sup> domini regis, vel exercitus sui, vel procurantibus auxilium & consilium præbuerit vel consensum, licet id quod in voluntate habuerit nō perduxerit ad effectum. Ad accusationem verò hujus criminis admittitur quilibet de populo, liber homo & servus & minor infra ætatem constitut<sup>9</sup>, dum tamen accusatus attachietur usque ad ætatem accusantis, & hoc dico, dum tamen sit ille qui accusat integræ famæ & non criminosus, quia criminosi ab omni accusatione repelluntur, ut si accusans fuerit latro cognitus vel utlagatus, vel aliquo genere felonie convictus vel convincendus. Nec etiam admittuntur ad accusationem in crimine læsæ majestatis aliquo casu conspiratores, vel crimini consentientes, & in hoc casu pertinet tota accusatio ad accusantem, & ad ipsum regem. Continet etiam sub se crimen læsæ majestatis crimen falsi, quod quidem multiplex est: ut si quis falsaverit sigillum domini regis, vel monetam reprobam fabricaverit, & hujusmodi, secundum quod inferiùs dicetur. Si sit aliquis, qui alium noverit inde esse culpabilem, vel in aliquo criminosum,

<sup>1</sup> It is stated in a note to Hale's *Pleas of the Crown*, i. p. 77, that in most of the MSS. of Bracton the reading in this place is "seductionem." The editor of the printed text of 1569, however, does not appear to have met with any such reading, as he has not noticed it in his list of various readings. "Se-

"ditionem" is the reading of MSS. Rawl. C. 160 and 159, also of MS. Crewe, and MS. Glas. On the other hand "seductionem" is the reading of MS. Galeazzo and of several MSS. of a subsequent period. It seems probable that "seditionem" is the older reading.

greater punishment on account of the person against whom they are directed, such as the crime of high treason, as if it be directed against the person of the king himself, which crime exceeds all other crimes as far as regards the punishment, therefore let us first treat of this crime of high treason. For the crime of high treason has under it many species, of which one is, as if any one by a rash daring should compass the death of the lord the king, or shall have done any thing or procured any thing to be done for the sedition of the king himself or of his army, or has afforded aid and counsel or consent to those procuring the same, although they have not carried into execution what they had in intention. But for the accusation of this crime any one of the people is admissible, a free man or a serf and a minor below age, provided the accused be attached until the accuser comes of age, and this I say, provided that he who accuses is of unblemished character, and not criminous, because criminous persons are rejected from all accusation, as if the accuser should be a known robber or outlaw, or convicted or about to be convicted of any kind of felony. For these are not admitted as accusers in a charge of high treason in any case, conspirators or persons consenting to the crime, and in this case the whole accusation appertains to the accuser and to the king himself. And the crime of forgery, which is multifold, contains under itself the crime of high treason, as if any one shall have forged the seal of the lord the king, or shall have fabricated base coin and such like according to what will be said below. If there be any one, who has known another to be thereon culpable or criminous

statim & sine intervallo aliquo accedere debet ad ipsum regem si possit, vel mittere, si venire non possit, ad aliquem regi familiarem & omnia ei manifestare per ordinem. Non enim debet morari in uno loco per duas noctes, vel per duos dies, antequam personam regis videat, nec debet ad aliqua negotia, quamvis urgentissima, se convertere, quia vix permittitur ei quòd retro aspiciat. Quod autem si ad tempus dissimulaverit & subticuerit, quasi consentiens & assentiens, erit seductor domini regis manifestus, sive accusatus proprius fuerit homo, vel alienus: & si post interval- lum accusare velit, non erit de jure audiendus, nisi docere poterit se fuisse justis rationibus impeditum. Si quis autem de hoc crimine fuerit diffamatus, tunc videndum erit utrum appareat accusator vel non, si autem nullus appareat, nisi sola fama, quæ tantum apud bonos & graves oriatur, hic salvò attachiabitur per salvos & securos plegios, vel si plegios non habuerit, per carceris inclusionem, donec de crimine sibi imposito veritas inquiratur, & si condemnandus fuerit, ultimum supplicium sustinebit cum pœnæ aggravatione corporalis, & omnium bonorum amissione, & hæredum suorum perpetua exhæredatione, ita quòd nec ad hæreditatem paternam vel maternam admittuntur. Est enim tam grave crimen istud, quòd vix permittitur hæredibus quòd vivant. Et si aliquando fortè ad successionem admittantur tales, hoc magis erit de gratia, quàm de jure. Si autem appareat accusator, tunc primò capiat ab eo securitas de proseguendo, & si plegios non habuerit, sufficit pro securitate sola fidei datio, & hæc ideò: quia si ad plegios inveniendos districtè teneretur, alii se abstinerent à consimili accusatione. Facta igitur securitate de proseguendo, ut præ-

f. 119.

in any way, he ought forthwith and without any delay to obtain access to the king himself, and if he cannot come himself, he should send to some attendant of the king, and disclose every thing to him in order. For he ought not to delay in one place for two nights or for two days before seeing the person of the king, nor ought he to betake himself to any business, however urgent, for it is scarcely allowed him to look behind him. But if he shall have dissembled and been silent for a time, as if consenting and assenting, he will be a manifest seductor of the lord the king, whether the accused be his own man or another's, and if he shall wish to accuse him after an interval of time, he will not be entitled to be heard of right, unless he can show that he has been impeded by just cause. But if any body shall be diffamed of this crime, then it will have to be seen whether an accuser appears or not, but if none appear, except fame alone, which arises amongst the good and serious only, he shall be attached safely by safe and secure sureties, or if he have not sureties, by inclusion within a prison until the truth be inquired after concerning the crime attributed to him, and if he is to be condemned, he shall sustain the last punishment with an aggravation of corporeal pain and the loss of all his goods and the perpetual disinherittance of his heirs, so that they be admitted neither to the paternal nor to the maternal inheritance. For that crime is so grave, that it is scarcely permissible for the heirs to live. And if sometimes such persons are admitted by chance to the succession, this will rather happen from grace, than of right. But if an accuser should appear, then in the first place let security be taken from him, that he will prosecute, and if he has sureties, the simple giving of a promise is sufficient for security: because if he were bound strictly to find sureties, others would abstain from a similar accusation. Security therefore having been given for the prosecution, as aforesaid, let

f. 119.

dictum est, statim capiatur accusatus & carcerali custodiæ mancipetur, nec erit per plegios dimittendus, nec per ballivum sine speciali præcepto domini regis, non magis quàm de homicidio perpetrato, & si liberè & sine districtione venire voluerit, & liberè respondere, liberè debet recedere, nisi iudicium ei incumberet. Utroque autem apparente, tam accusante quàm accusato, proponat accusans appellum suum in hunc modum: scilicet dicere debet se interfuisse & vidisse certo loco, certo die, certa hora, & scivisse ipsum accusatum prælocutum<sup>1</sup> fuisse mortem regis, vel seditionem suam vel exercitus sui, vel consensisse, vel auxilium & consilium impendisse, vel ad hoc auctoritatem præstitisse, & hoc ego juxta considerationem curiæ disrationare paratus sum. Accusato etiam è contra per ordinem negante, solet appellum istud per duellum terminari, nec erit locus concordiae, nisi hoc sit de voluntate ipsius regis. Poterit tamen accusatus ad appellum respondere, & illud determinare antequam duellum vadietur. Dicere enim poterit appellatus, cùm feloniam defenderit & seditionem domini regis & totum quicquid ei imponitur, & petere sibi allocari quòd appellans est latro cognoscens, & latro captus & imprisonatus pro latrocinio, & quòd fregit prisonam & à prisona evasit, vel quòd utlagatus fuit, ita quòd nihil restat de eo judicandum nisi tantùm executio iudicii. Item petere poterit sibi allocari, quòd cùm dicat appellans quòd alii plures fuerunt cum eo ubi prælocutio illa facta fuit, quòd ipsi nunquam simul fuerunt aliquo tempore de die vel de nocte, vel aliquo alio tempore. Item petere poterit sibi allocari, quòd cùm idem appellans post diem quo prolocutio illa fieri debuit & seditio, ductus esset aliàs coram justitiariis pro

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<sup>1</sup> "prolocutum," MS. Rawl. C. 160. "prosequutum;" MS. Rawl. C. 159.

the accused party be seized and committed to the custody of a prison, nor is he to be dismissed upon sureties, nor by the bailiff without a special precept of the lord the king, no more than where homicide has been perpetrated; and if he wishes to come freely and without distrainment and to answer freely, he ought to withdraw freely, unless a judgment rests upon him. Upon both of them appearing, as well the accuser and the accused party, let the accuser propound his charge in this manner: for instance he ought to say, that he was present and saw in a certain place, on a certain day, at a certain hour, and knew that the party accused proposed the death of the king or his sedition or that of his army, or consented to it, or gave aid or counsel, or afforded authority to it, and this I am prepared to prove according to the consideration of the court. The accused party on the other hand denying in order, the charge is accustomed to be determined by a duel, nor will there be place for concord, unless this be upon the desire of the king himself. But the accused party may reply to the charge, and determine it before security is given for the duel. For the accused may say, when he denies the felony and the sedition of the lord the king and all whatever is imputed against him, and claim that there be allowed to his account, that the accuser is a known robber and a robber captured and imprisoned for robbery, and that he has broken his prison and has escaped from his prison, or that he has been outlawed, so that nothing remains to be adjudged respecting him except only the execution of a judgment. Likewise he may claim that there be allowed to him, that when the accuser says that there were several others with him when that proposal was made, that they were never together at any one time by day or by night, or at any other time. Likewise he may claim that there be allowed to him, that when the same appellant, after the day on which that prolocution and sedition ought to have been made, was brought elsewhere before the jus-

alia transgressione, nihil locutus fuit de tali seditione domini regis. Item petere poterit sibi allocari, quòd ex quo appellans talem scivit seditionem esse prolocutam, statim & sine mora non accessit ad regem, ut hoc ei ostenderet, sed hoc per tantum tempus subituit, quòd interim posset domino regi (si ita esset) periculum imminere; et unde in appello suo audiri non deberet, sicut inimicus & traditor domini regis, & consentiens feloniae. Item petere poterit sibi allocari, quòd cum hoc fieri deberet tali tempore, & appellans esset saepius in curia domini regis, & cum rege saepius loqueretur, vel loqui posset si vellet, de hoc nihil ei ostendit. Item petere poterit sibi allocari, quòd cum ipse appellatus venerit coram ipso appellante, & staret inter plures, ipsum non cognovit nec scivit ipsum ab aliis discernere. Poterit etiam petere plura alia sibi allocari, de die, & hora, & variatione, & aliis pluribus, secundum quod inferius dicitur de appellis. Ad exceptiones istas, oportet quòd appellans respondeat ad singulos articulos per ordinem, ut sic reducat<sup>1</sup> appellum ad iudicium. Et tunc videndum, quis possit & debeat iudicare, & sciendum, quod non ipse rex, quia sic esset in querela propria actor & iudex, in iudicio vitae, membrorum, & exheredationis, quod quidem non esset, si querela esset aliorum. Item justitiarum? non, cum in iudiciis personam domini regis, cujus vices gerit, representet. Quis ergo iudicabit? videtur, sine praepjudicio melioris sententiae, quòd curia & pares iudicabunt, ne

f. 119 b.

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<sup>1</sup> Remaneat. MS. Rawl. C. 160.



ticiaries for another transgression, he said nothing concerning such a sedition against the lord the king. Likewise he may claim that there be allowed to him, that from the time, when the accuser knew that such a sedition was proposed, he did not forthwith and without delay obtain access to the king, that he might disclose it to him, but he kept silence as to it so long, that meanwhile, if the fact were so, danger to the lord the king might be imminent. And hence he ought not to be heard in his accusation, as being an enemy and betrayer of the lord the king, and consenting to the felony. Likewise he may claim that there be allowed to him, that when this ought to have been done at a certain time, and the accuser was repeatedly in the court of the king, and repeatedly spoke with the king, or might have spoken with him if he wished, he disclosed to him nothing thereof. Likewise he may claim that there be allowed to him, that when he the accused party came into the presence of the accuser, and stood in the midst of several persons, he did not know him nor knew how to distinguish him from the others. He may also claim that several other things be allowed him concerning the day, and the hour, and the variation, and several other things according to what will be explained below on the subject of accusations. To these exceptions it is incumbent that the accuser should answer to each of the articles in order, that so he may reduce the accusation into a judgment. And then it is to be seen, who can and ought to judge, and it is to be known, that it is not the king himself, otherwise he would be plaintiff and judge in his own cause, in a judgment of life or members or disinheritance, which would not be the case, if the complaint was on the part of others. Likewise the justices? No, since in judgments the justice represents the person of the king whose part he bears. Who therefore shall judge? f. 119 b. It appears, without prejudice to a better opinion, that the court and the peers shall judge, lest misdeeds should

maleficia remaneant impunita, & maximè ubi periculum vitæ fuerit & membrorum vel exhæredationis, cum ipse rex pars actrix esse debeat in iudicio. Sed in hac parte ut videtur, erit distinguendū, quale sit factum de quo pponitur appellum, utrum sc. sit ibi felonia vel transgressio, quia quælibet transgressio dici non debet felonia, quis è converso. Si autem ibi fuerit felonia, tunc judicāda sunt verba appelli, ordo & processus, ut sciri possit si inter appellat & appellantem jungi possit duell, quia si ad appellum accusantis paratus esset appellatus, sine responsione vadiare duellum, præcedere deberet examinatio, ut prædictum est. Et si sine examinatione contra justitiam esset vadiatum, per examinationem posset devadiari. Si autem tale sit factum, quòd debeat ibi magis transgressio quàm felonia denotari, remanebit duellum, sed tunc videndum utrum transgressio illa quæ tangit regem gravis fuerit vel levis, sive sibi, sive uxori & pueris. In suis verò poterit rex injuriari. Si autem levis fuerit transgressio quæ poenam infligat pecuniariam tantum, & levem, benè possunt justitiiarii sine paribus judicare. Si autem gravis fuerit transgressio & proxima exhæredationi, quòd redemptionem inducat, ibi debent pares justitiariis associarii, ne ipse rex per seipsum vel justitios suos sine paribus actor sit & judex.

2.  
De crimine  
falsi et  
sino speci-  
ebus.

Est & aliud genus criminis læsæ majestatis, quod inter graviora numeratur, quia ultimum inducit supplicium & mortis occasionem, sc. crimen falsi, in quadam sui specie, & quod tangit coronam ipsius domini regis, ut si aliquis accusatus fuerit vel convictus, quòd sigillum domini regis falsaverit, consignando inde chartas vel brevias, vel si chartas confecerit & brevias & signa apposuerit adulterina, quo casu si quis inde inveniatur

remain unpunished, and especially where there shall be peril of life and members or disinheritance, since the king himself ought to be the party plaintiff in the judgment. But in this part, as it seems, it will have to be distinguished, what the act is concerning which the accusation is propounded, whether for instance it be felony or trespass, because every trespass ought not to be called felony, although the converse may hold good. But if there be felony there, then the words of the accusation are to be judged, the order and the process, that it may be known if between the accused party and the accuser the duel may be joined, because if the accused is prepared upon the accusation of the accuser without a reply to give security for the duel, an examination ought to precede, as has been stated above. And if security has been given contrary to justice without examination, it may be released upon examination. But if the act be such, that it ought to be denoted a trespass rather than a felony, the duel will remain, but then it is to be seen whether that trespass which touches the king has been grave or slight, whether it touch the king or his wife or his children. For the king may be injured in the persons of his family. But if the trespass has been grave and close on disinheritance, so that it may bring on ransom, there the peers [of the accused] ought to be associated with the justices, lest the king himself by himself or his justices without any peers should be the plaintiff and the judge.

There is another kind of treason, which is counted amongst the greater treasons, because it brings on the last punishment and an occasion of death, namely, the crime of forgery, in a species of its own, and which touches the crown of the lord the king himself, as if any one should be accused or convicted, that he had falsified the seal of the king himself, by sealing therewith charters or writs, or if he has prepared charters or writs and affixed to them adulterine seals, in which case if he be

2.  
Of the  
crime of  
forgery  
and its  
species.

culpabilis, vel seysitus, si warrantum non habuerit, pro voluntate regis iudicium sustinebit, & si warrantum habuerit, & warrantizaverit, liberabitur & tenebitur warrantus. Si autem cùm warrantum nominaverit, warrant' subtraxerit se, exigendus erit & utlagandus, sed ille qui captus est, non erit propter hoc dimittendus, nec liberabitur, nisi, quòd culpabilis non sit, posuerit se super patriam, & si forte cùm venerit, de warrantia ei defecerit, bene poterit inter eos ad duelum perveniri. Est & aliud genus criminis, quod sub nomine falsi continetur, & tangit coronam domini regis, & ultimum inducit supplicium, sicut de illis qui falsam fabricant monetam, & qui de re non reproba faciunt reprobam, sicut sunt retonsores denariorum, qui cùm sint in seysina, sæpius non contingit ipsos liberari per warranti vocationem. Socios autem & coadjutores & ministros habere poterunt in hoc opere, quos si appellare voluerint, audientur.

De occultatione thesauri inventi.

Est inter cætera gravis præsumptio contra regem & dignitatem & coronam suam, quæ quidem est quasi crimen furti, scilicet occultatio thesauri inventi fraudulosa, ut si quis accusatus fuerit, quòd thesaurum inveniret, scil. aurum vel argentum, vel aliud genus metalli, quocunque loco, cùm super hoc apud bonos & graves fuerit diffamatus per patriam, statim attachietur quòd sit coram justitiariis in adventu eorum, ubi si negaverit se aliquid invenisse, poterit veritas per patriam declarari, & cùm non sit de aliquo seysitus, poterit tamen contra ipsum esse præsumptiones probabiles, quibus standum erit donec per patriam probetur contrarium. Poterunt autem tales esse præsumptiones, ut si solito ditiùs se habuerit in vestibus & in aliis

f. 120.

found culpable, or seysed of them, and not have a warrantor, he shall sustain judgment at the will of the king, and if he have a warrantor and the warrantor shall warrant, he shall be set free, and the warrantor shall be detained. But if when he has named a warrantor, the warrantor has withdrawn himself, he shall be exacted and outlawed, but he who has been taken shall not on that account be dismissed nor be liberated, unless he has put himself on the country that he is not culpable, and if by chance when he has come, the warranty fails, it may well come then to a duel between them. There is also another kind of crime, which is contained under the name of forgery, and touches the crown of the king and brings on the last punishment, as for instance of those who fabricate false money, and who debase a thing which is not of itself base, such as the clippers of coin, who when they are in seysine of it, it more often does not happen that they are liberated on calling a warrantor. They may, however, have associates and coadjutors and ministers in this work, whom if they wish to call, they shall be heard.

There is also amongst other things a grave attempt against the king and his dignity and his crown, which is as it were a crime of theft, for instance the fraudulent hiding of treasure-trove, as if a person should be accused that he had found treasure, for instance, gold or silver or any other kind of metal, in whatever place, when he shall have been ill spoken of amongst honest and grave persons throughout the country, he shall be forthwith attached that he present himself before the justices at their coming, when if he shall deny that he has found any thing, the truth may be declared by the country, and when he shall not be seysed of any thing, there may be probable presumptions against him, upon which reliance may be placed, until the contrary be proved by the country. But the presumptions may be of this kind, as if he has exhibited more wealth than

3.  
Of the  
hiding of  
treasure-  
trove.

f. 126

ornamentis, cibis & potibus & hujusmodi, qui cū super hoc fuerit convictus, erit gaolæ committendus, & postea graviter, pro voluntate domini regis redimendus, & non refert quo loco hujusmodi thesaurus inveniatur, secundū tempora moderna, licet aliter hoc antiquitū fuerit observatum.

4.  
Quid est  
thesaurus.  
Dig. XLI.  
Tit. i. 31.  
§ 1.

f. 120.

Est autem thesaurus quædam vetus depositio pecuniæ, vel alterius metalli, cujus non extat modo memoria, ut jam dominum non habeat, & sic de jure naturali,<sup>1</sup> fit ejus qui invenerit, ut non alterius sit. Alioquin si quis aliquid lucris causa, vel metus, vel custodiæ recondiderit sub terra, non erit thesaurus, cujus etiam furtum fit. Thesaurus fortunæ donum creditur, & nemo servorum opera thesaurum quærere debet, nec propter thesaurum terram fodere, sed si alterius rei tunc operam sumebat, & fortuna aliud dedit. Cū igitur thesaurus in nullius bonis sit, & antiquitū de jure naturali esset inventoris, nunc de jure gentium efficitur ipsius dñi regis. Et sunt alia quædam quæ in nullius bonis esse dicuntur, sicut wreckum maris, grossus piscis, sicut sturgio & balena & aliæ res quæ dominum non habent, sicut animalia vagantia quæ nullus sequitur, petit, vel advocat, & quæ sunt ipsius domini regis propter suum privilegium, & eorum quibus ipse rex concesserit talem libertatem aut privilegium,<sup>2</sup> & unde videndum, quod dici debeat wreckum.

5.  
Quid sit  
wreckum,  
et de  
grosso  
pisce, sc.  
sturgio et  
balena.

Et sciendum quòd wreckum dici poterit quasi derelictū, ut si quid (navis levandæ causa) à nave pjectū fuerit ab aliquo, sine animo retinendi vel repetendi, id ppiè dici poterit wreckum, cū res pjecta habita sit p derelicta, & si habita sit p derelicta videri poterit

<sup>1</sup> "de jure naturali," omitted in MS. Rawl. C. 160.

<sup>2</sup> "aut privilegium," omitted in MS. Rawl. C. 160.

usual in his dress or in other ornaments, in his food or in his drink and such like, who when he shall have been convicted of this, he shall be committed to gaol to be heavily ransomed at the pleasure of the lord the king, and it does not matter in what place this kind of treasure has been found according to modern times, although in ancient times it was otherwise observed.

But treasure is an ancient deposit of money or some other metal, respecting which memory exists not, so that it has no owner, and so of natural right, it becomes the property of him who has found it, so that it shall not belong to another. Otherwise if any one shall have hidden any thing under the ground for the sake of gain, or of fear, or of custody, it shall not be treasure of which a theft is made. Treasure is believed to be a gift of fortune, and no one ought to seek for treasure by the labour of serfs, nor to dig up the ground for treasure, but if he was engaged at work upon one thing, and fortune gave him another. Since therefore treasure is in nobody's goods, and of ancient time it was by natural right the property of the finder, it is now by the law of nations the property of the lord the king himself. And there are other things which are said to be in nobody's goods, as for instance wreck of the sea, great fish, as sturgeon and whale, and other things which have no owner, as stray animals, which nobody pursues, seeks for, or calls for, and which belong to the lord the king himself on account of his privilege, and to those to whom the king himself has granted such a franchise or privilege, and therefore we must see what is wreck.

And it is to be known that wreck may be called as it were derelict, as if any thing (for the sake of lightening a ship) has been cast overboard by any one, without the intention of retaining it or reclaiming it, that may properly be called wreck, since the thing cast overboard has been regarded as derelict, and it may be seen through

4.  
What is  
treasure.

5.  
What is  
wreck, and  
concerning  
great fish,  
that is,  
sturgeon  
and whale.

p præsumptiones, ut si liber projectus fuerit, utrū inveniatur clausus vel aptus, cū cōmodè claudi possit & benè, & sic de similibus. Item magis ppriè dici poterit wreckū, si navis frangatur, & de qua nullus vivus evaserit, & maximè si dominus rerū submersus fuerit, & quicquid inde ad terrā venerit erit dñi regis, nec aliquis alius aliquid à dño rege inde vindicare poterit, vel habere, quamvis prope littus maris prædia possederit, nisi de wrecko habendo speciali gaudeat privilegio. Et quòd hujusmodi dici debeant wreckum verum est, nisi ita sit quòd verus dominus aliunde veniens, per certa indicia & signa, docuerit res esse suas, ut si canis vivus inveniatur, & constare possit quòd talis sit dominus illius canis, præsumitur ex hoc illum esse dominum illius canis & illarum rerum. Et eodem modo, si certa signa apposita fuerint mercibus & aliis rebus. Et ea quæ dicta sunt, locum habent si res in littore maris inveniuntur, & illud idem si ppe littus vel longiùs in mare, dum tamen constare poterit in veritate, quòd in littore essent applicandæ. Sed quid si in mari longiùs à littore inveniuntur, ita quòd constare non possit ad q terram vel regionem esset applicandæ, tunc quicquid ita inventum fuerit erit inventoris, eò quòd in nullius bonis esse dicatur, & dicitur à nautis Lagan & q ideo occupanti conceditur, quia non est aliquis qui inde privileg' habere possit, rex non magis q privata psona, ppter incertū rei eventū. De sturgione verò ita observatur, q rex illum habebit integrū ppter suū privileg', de ballena verò, sufficit, secundum quosdam, si rex inde habuerit caput, & regina caudā.

f. 120 b.

Britton,  
l. i. ch.  
xviii.



presumptions if it has been regarded as derelict, as if a book be cast overboard, whether it has been found closed or open, when it could well and conveniently have been closed, and so of similar things. Likewise it may be more properly called wreck, if the ship be broken up, and from which no living thing has escaped, and principally if the owner of the article has been drowned, and whatever comes to land therefrom shall be the property of the lord the king, nor shall any one else claim or have anything thereof from the lord the king, although he may have lands near the shore of the sea, unless he enjoys a special privilege concerning having wreck. And that things of this kind ought to be called wreck is true, unless it be that the true owner coming from elsewhere may show by certain marks and signs that the things are his property, as if a live dog has been found, and it can be proved that he is the owner of the dog, it is thereupon presumed that he is the owner of the dog and of the things. And in the same way, if certain signs have been affixed to the merchandise and other things. And those things, which have been said, are applicable, if the things are found on the shore of the sea, and the same happens if they are found near the shore or further off on the sea, provided only it is certain in truth that they will be cast on the shore. But what if they are found on the sea at a long distance from the shore, so that it cannot be certain upon what shore or country they will be cast, then whatever shall be so found shall belong to the finder, because it may be said to be nobody's property, and it is called by sailors *lagan*, and because it is therefore granted to the first taker, because there is nobody who has a privilege respecting it, the king no more than a private person, on account of the uncertainty of the event. Concerning sturgeon indeed it is thus observed, that the king shall have the whole of it on account of his privilege, but of whale it is sufficient according to some, if the king has the head, and the queen the tail.

f. 120 b.

6.  
De assis-  
regni jura-  
tis, si non  
observen-  
tur.

Est enī gravis p̃sumptio contra regem & coronam & dignitatē suā, ut si assisæ statutæ & juratæ in regno suo ad cōmunem regni sui utilitatē non fuerint observatæ, secund' q̃ superius videri poterit inter capitula supradicta, & unde transgressorib⁹ quandoq̃, infligitur pœna corporalis, sc. pilloralis vel tumboralis cum infamia, secundū regni statuta, & quandoq̃, pœna pecuniaria, & quandoq̃, villæ abjuratio, secundā diversitatem delictorum.

#### CAP. IV.

1.  
De crimine  
homicidii,  
et qualiter  
dividitur.

Est etiā inter alia crimina, crimen capitale q̃ in parte tangit ipsum regē, cujus pax infringitur, & in parte privatā psonā, qui nequiter & contra pacem dñi regis occiditur. Et unde inprimis dicendū est de homicidio, quid sit homicidiū, & unde dicatur, q̃ ejus species, & qua pœna homicidæ puniantur.

2.  
Quid sit  
homici-  
dium.

Et est homicidium hominis occisio ab homine facta, si enim à bove, cane, vel alia re, non dicetur ppriè homicidium. Est enim dict' homicidium ab homine & cædo, quasi hominis cædium. Species homicidii sunt plures, nam aliud spirituale, aliud corporale: de spirituali verò ad præsens non est dicend', sed corporale est, quo homo occiditur corporaliter, & hoc dupliciter committitur, lingua vel facto. Lingua tribus modis, sc. p̃cepto, consilio, defensione sive tuitione. Facto, quatuor modis, sc. justitia, necessitate, casu & voluntate. Justitia, ut cū judex vel justitarius vel minister reum justè damnañ occidit. Istud autem homicidiū, si sit ex livore vel delectatione effundendi humaū

It is a grave presumption against the king and his crown and his dignity, if the constituted and sworn assises in his kingdom should not be observed for the common utility of his kingdom, according to what may be seen above amongst the aforesaid articles, and there-upon corporeal punishment is sometimes inflicted upon transgressors, for instance, the pillory or the tumbril with infamy, according to the statutes of the kingdom, and sometimes a pecuniary punishment, and sometimes abjuration of a vill, according to the diversity of the delinquency.

6.  
Of the  
sworn  
assises of  
the realm  
if they are  
not ob-  
served.

## CHAPTER IV.

There is amongst other crimes, a capital crime which in part touches the king himself, whose peace is infringed, and in part touches a private person, who is slain wickedly and against the peace of the king. And hence it is first to be discussed respecting homicide, what is homicide, and whence it is so called, what are its species, and by what penalty homicide is punished.

1.  
Of the  
crime of  
homicide.

Homicide is the killing of a man done by a man, for if it be done by an ox, a dog, or other thing, it is not properly termed homicide. For homicide is so termed from "homine" and "cædo," as it were the slaying of a man. There are several species of homicide, for one is spiritual, and another is corporeal: concerning spiritual homicide for the present there is nothing to be said here, but corporeal homicide is that by which is slain corporeally, and this is done in two ways, by the tongue and by an act. By the tongue in three ways, for instance, by precept, by counsel, by defence or protection. By an act in four ways, for instance, by justice, by necessity, by chance, and by will. By justice, as when the judge, or justiciary, or his officer, slays a man justly condemned. But that is homicide, if it be done from malignity or the delight of shedding human blood,

2.  
What is  
homicide.

sanguinē, licet justè occidatur iste, tamen peccat mortaliter ppter intentionē corruptā. Si vero hoc fiat ex amore justitiæ, non peccat judex ipsum condēnando ad mortem, & ꝑcipiendo ministro ut occidat eum, nec minister si missus à judice occidat condemnāt, peccare<sup>1</sup> tamen uterque, si hæc fecerint juris ordine non servato. Necessitate, quo casu distinguendum erit utrum necessitas illa fuit evitabilis vel non. Si autem evitabilis, & evadere posset absque occisione, tunc erit reus homicidii. Si autem inevitabilis, quia occidit hominem sine odii meditatione in metu & dolore animi, se & sua liberando, cū aliter evadere non posset, non tenetur ad pœnam homicidii. Casu, sicut per infortunium, cū aliquis projicit lapidem ad avem vel animal, & alius transiens ex insperato percutitur & moritur, vel si quis arborem inciderit, & per casum arboris, aliquis opprimatur & hujusmodi. Sed hic erit distinguendum, utrum quis dederit operam rei licitæ vel illicitæ: si illicitæ, ut si lapidem projiciebat quis versus locum, p quem consueverunt homines transit facere, vel dum insequitur quis equū vel bovē, & aliquis à bove vel equo percussus fuerit, & hujusmodi, hoc imputatur ei. Si vero licitæ rei operam dābat, ut si magister causa disciplinæ discipulum verberat, vel si cū quis deponebat fœnum de curru, vel arborem incidebat & hujusmodi, hic si adhibuit diligentiam quam potuit, s. respiciendo & proclamando, sed non nimis tardè vel dimissè, sed tempore congruo & altè, & ita quòd si aliquis ibi erat vel illuc veniebat posset aufugere & sibi præcavere, vel magister non excedendo modum in verberando discipulum, non imputatur ei.

f. 121.

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<sup>1</sup> "peccat," MSS. Rawl. C. 160 and 159.

although he be justly slain, nevertheless he sins mortally on account of his corrupt intention. But if this be done from his love of justice, the judge does not sin in condemning him to death, and in ordering his officer to slay him, nor does the officer sin, if being sent by the judge he slays the condemned person, but they both sin, if they have done this without observing the order of the law. From necessity, in which case it must be distinguished, whether that necessity was avoidable or not. But if it were avoidable, and he could avoid it without slaughter, then he will be guilty of homicide. But if it was inevitable, since he slew a man without any meditation of hatred, in fear and grief of mind in delivering himself and his property, when he could not otherwise escape, he is not liable to the punishment of homicide. By chance, as by misfortune, when a person has projected a stone against a bird or an animal, and another person passing unexpectedly is struck and dies, or as if a person has cut down a tree, and some one has been crushed by the fall of the tree, and such like. But here it is to be distinguished whether a person is employed upon a lawful or unlawful work, as if a person has projected a stone towards a place across which men are accustomed to pass, or whilst a person pursues a horse or an ox, and some one has been struck by the horse or the ox, and such like, this is imputed to his account. f. 121. But if he was employed in a lawful work, as if a master is flogging his scholar for the sake of discipline, or if when a person was casting down hay from a cart, or cutting into a tree and such like, if he had taken as diligent care as he could, by looking out and by calling out, but not too slowly or in too low a voice, but in suitable time and with a loud voice, and so that if any one were there or were coming there, he might run away and take care for himself, or the master not exceeding moderation in flogging his scholar, blame is not imputable to him. But if he should be employed upon

Sed si dabat operam rei licitæ & non adhibuit diligentiam debitam, imputabitur ei. Voluntate, ut si quis ex certa scientia, & in assultu præmeditato, ira vel odio, vel causa lucri, nequiter & in feloniam & contra pacem domini regis aliquem interfecerit. Et fit aliquando hujusmodi homicidium pluribus astantibus & videntibus, aliquando verò clanculò, nemine vidente, ita quòd sciri non possit quis sit occisor, & hujusmodi homicidium dici poterit murdrum, secundum quod inferius dicitur. Pœna vero homicidii duplex est, spiritualis, v. z. & corporalis, spiritualis tollitur per patientiam & pœnitentiam. Et occidit quis alium dupliciter, quando ꝑ lingua, quandoq. facto. Lingua, ut si quis dissuadet, & sic dissuadendo retrahit aliquem à bono pposito volentem alium liberare à morte, & sic quodammodo indirectè facit quis homicidium. Pœna verò homicidii, commissi facto, variatur: ꝑ homicidio verò justitiæ justa & recta intētionē facto, non est aliqua pœna infligenda. Si sit aliquis, qui mulierem prægnantem percusserit, vel ei venenum dederit per quod fecerit abortivum, si puerperium jam formatum vel animatum fuerit, & maximè si animatum, facit homicidiū. Possunt etiam esse plures culpabiles de homicidio sicut unus, ut si plures rixati fuerint inter se in aliquo conflictu, & aliquis sit interfectus inter tales, nec appareat ex quo nec ex cujus vulnere, omnes dici possunt homicidæ, & illi qui percusserunt, & qui tenuerunt malo animo dum percussus fuerit. Item & illi, qui voluntate occidendi venerunt, licet non percusserunt. Item & illi qui nec occiderunt, nec voluntatem occidendi habuerunt, sed venerunt ut præstarent consilium & auxilium occisoribus, quamvis aliquando eorum

a lawful work, and has not used due diligence, blame shall be imputable to him. With intention, as if any one with certain knowledge and with a premeditated assault, through anger or hatred, or for the cause of gain, wickedly and feloniously and against the peace of the king has slain a person. And this kind of homicide is frequently committed when several persons are standing by and are witnesses, but sometimes secretly, when no one sees it, so that it can be known who is the slayer, and this kind of homicide may be called murder, according to what will be stated below. But the punishment of homicide is twofold, that is spiritual and corporeal, the spiritual is removed by patience and penitence. And a person slays another doubly, sometimes by the tongue, and sometimes by an act. By the tongue, if a person dissuades, and so by dissuading draws any one back from a good purpose, being willing to rescue another from death, and so he indirectly commits as it were homicide. But the punishment of homicide committed in fact, is varied; for homicide, however, committed with a just and right intention of justice no punishment is to be inflicted. If there be some one, who has struck a pregnant woman, or has given her poison, whereby he has caused abortion, if the foetus be already formed and animated, and particularly if it be animated, he commits homicide. Several persons may be culpable of homicide just as one person, as for instance if several persons have quarrelled amongst themselves in a conflict, and some one has been slain amongst such persons, and it does not appear by whom nor by whose blow, all may be called homicides, both those who struck him, and those who held him with an evil intention until he was struck. Likewise also those who have come with an intention of slaying, although they did not strike. Likewise also those who have not slain, nor had any intention of slaying, but came that they might give counsel and help to the slayers, although

violentia repellatur. Item non solùm tenetur ille qui percutit & occidit, verùm & ille qui præcipit percutere & occidere, quia cùm non sint immunes à culpa, immunes esse non debeant à poena. Nec etiam ille, qui cùm posset hominem à morte liberare, non liberavit. Item fit homicidium in bello, & tunc videndum, utrum bellum sit justum vel injustum. Si autem injustum, tenebitur occisor: si autem justum, sicut p defensione patriæ, non tenebitur, nisi hoc fecerit corrupta voluntate & intentione.

## CAP. V.

1. Cùm autem contingat homicidium fieri quandoque in domibus, quandoque in villis, quandoque in vicis, quandoque in campis extra villam, & etiam in nemoribus, & ad coronatores pertineat de hujusmodi occisis cognoscere & de interfectore, quis ille fuerit, si nesciatur, diligentem facere inquisitionem: ideò bonum est videre quale sit eorū officium in hac parte. Est igitur eorum officium, quòd quàm cito habuerint mandatū à ballivo dñi regis, vel à pbis hominib<sup>9</sup> illi<sup>9</sup> patriæ, accedere debent ad occisos vel vulneratos, sive ad submersos vel subitò mortuos, & ad domorum fractiones, & ad locum ubi dicitur thesaurū fuisse inventum, & hoc facere debent statim & sine mora aliqua, & in adventu ipsorum versus partes illas mandare debeant quatuor, quinq, vel sex villis vicinis, quòd statim veniant corā ipsis, & p eorū sacramtū faciant inquisitionem de homine occiso, cùm à coronatorib<sup>9</sup> fuerint requisiti.

2. Inprimis, s. ubi mortu<sup>9</sup> occisus fuerit, in domo vel in campo. Itē si ad luctā, vel ad tabernā, vel aliam cōgregationem, & ubicunq, invent<sup>9</sup> fuerit mortuus, tunc fuerit.



sometimes their violence may have been repelled. Likewise not only is he liable, who strikes and slays, but also he who advised how to strike or slay, because since they are not exempt from blame, they ought not to be exempt from punishment. Not even he, who when he could rescue a man from death, did not rescue him. Likewise there may be homicide in war, and then we must see whether the war be just or unjust. But if it be unjust, the slayer will be liable. But if just, as for the defence of one's country, he will not be liable, unless he has done it with a corrupt will and intention.

## CHAPTER V.

But since it happens, that homicide is committed sometimes in houses, sometimes in townships, sometimes in streets, sometimes in open fields outside a township, and even in woods, and it pertains to the coroners to take cognisance of the persons slain in this manner, and to make a diligent inquest concerning the slayer, who he was, if he be unknown; therefore it is good to see what kind of office their office is in this part. It is therefore their office, that as soon as they have received a mandate from the bailiff of the lord the king, or from the prudhommes of that neighbourhood, they ought to visit the slain or the wounded, or the drowned, or those who have died suddenly, and the breakages into houses, and the places where treasure has been said to have been found, and this they ought to do forthwith and without any delay, and at their coming to those parts they ought to order four, five, or six neighbouring townships that they come immediately before them, and by their oath make an inquest concerning the man slain, when they shall have been required by the coroner.

1.  
Of the  
office of  
coroners  
concerning  
homicide.  
f. 121 b.

In the first place, that is, where a dead man has been slain, in a house or in a field. Likewise if in a wrestling match or in a tavern or another assembly, and wherever

2.  
Concern-  
ing the  
inquests,  
where he

diligenter erit inquirendum, qui tunc interfuerunt, sive masculus sive foemina, major vel minor, et qui illorum de facto fuerunt culpabiles, & qui de forcia, consilio vel praecepto, & qui fuerunt in causa aliqua illius facti. Et facta inquisitione diligenti, quotquot p inquisitionē inventi fuerunt culpabiles aliquorū praelectorū modorum, si p̄sentes fuerint vel alicubi inveniri possent, statim & sine mora capiantur, & vic. deliberentur, & in gaolā detrudantur. Quotquot autem p inquisitionem inventi fuerunt in domib<sup>9</sup> illis ubi mortu<sup>9</sup> fuit interfect<sup>9</sup>, licet culpabiles non fuerunt, attachiandi tamen sunt usq. ad adventum justitiariorū, & nomina plegiorū irrotulentur in rotulis coronatorū.

3.  
De attachi-  
endo cul-  
pabiles.

Nec sunt illi, qui culpabiles inveniuntur, p plegios dimittendi sine speciali praecepto dñi regis, facta prius inquisitione, utrum appellati sint odio vel atya, vel p verū appellū. Et breve de tali inquisitione faciēda gratis debet concedi, secūdum q videri poterit in charta de libertatib<sup>9</sup>. Et nō erit de aliquib<sup>9</sup> inquisitio faciēda, nisi tantūmodo de illis qui fuerunt in prisona.

4.  
Si in cam-  
pis, vel in  
boscis.

Si autē in campis vel in boscis inveniať occisus, imprimis attachient inventores, sive masculi fuerint sive foeminæ, ejuscūq. fuerint ætatis, & sive mortu<sup>9</sup> occisus fuerit ibi, vel alibi ubicunq. Et si ibi occisus nō fuerit, secūdum q ppendi poterit p præsumptiones, & multotiens p sanguinis effusionem, si plagas habuerit, statim & recenter investiganda sunt vestigia malefactorū, & sequenda p ductū carectæ, passus equorū, & vestigia hominū, & alio modo, secundum q consultius & melius fieri possit.

he may be found dead, then it is to be diligently inquired, who then took part in it, whether male or female, major or minor, and who of them were culpable in deed, and who as accessory by force, counsel, or precept, and who were the cause in any way of that deed. And after inquest has been diligently made, as many as have been found by the inquest culpable in any of the aforesaid ways, if they should be present or can be found anywhere, let them forthwith and without delay be seized and delivered to the sheriff and thrust into gaol. But as many persons as have been found by that inquest in those houses where the dead man was slain, although they have not been culpable, they are to be bound over until the coming of the justices, and let the names of their sureties be enrolled in the rolls of the coroners.

Nor are those, who have been found culpable, to be dismissed upon sureties, without a special precept from the king, an inquest having been first held whether they have been accused through enmity or spite, or by a true accuser. And a writ for making such an inquest ought to be granted gratuitously, according to what is to be seen in the Charter of Liberties. And no inquest shall be held upon any others except upon those who were in prison.

But if he be found slain in fields or woods, the finders shall be first attached, whether they be male or female, of whatever age they may be, and whether the dead person was slain there or anywhere else. And if he has not been slain there, according to what may be concluded from presumptions, and in many cases from the loss of blood, if he has received wounds, the tracks of the malefactors are to be forthwith and recently investigated, and to be traced by the wheel-marks of a cart, the hoof-marks of horses, and the footsteps of men, and in any other manner, according as may best be done upon after deliberation.

5. Inquiratur etiā utrum mortuus ille not<sup>9</sup> fuerit vel  
 Si notus  
 vel igno-  
 tus. ignotus, & ubi nocte illa hospitat<sup>9</sup>, secundū q inqui-  
 sitū fuerit attachientur hospes & hospites,<sup>1</sup> & tota  
 familia in domo inventa, ubi fuerit hospitat<sup>9</sup>.

6. Si autem sit aliquis qui effugerit p hñodi occisis,  
 Si occisor  
 fugerit. & de quo habeatur aliqua suspitio q culpabilis extite-  
 rit, statim accedāt coronatores ad domos ipsius, &  
 diligenter inquirant, quæ catalla habuerit, & quæ blada  
 in horreo, si villan<sup>9</sup> fuerit, & si liber homo, quam  
 terrā liberā habuerit & quid valeat, sive blada habue-  
 rit in terra sive nō. Et cū ita inquisiverint, appre-  
 ciari faciant blada & catalla eorū sicut statim vendi  
 possunt, & terrā liberā quantū valeat p anū, & statim  
 liberēt ea totæ villatæ ad respondendū de p̄cio corā  
 justitiariis, salvo tamē servitio dominorū feodi. Et  
 istis ōnib<sup>9</sup> sic inquisitis, sepeliantur corpora mortuorū  
 f. 122. occisorum, quæ si ante talem inquisitionem factam &  
 visum coronatorum sepulta fuerint, tota villata in mi-  
 sericordia remanebit.

7. Si autem de submersis & subitō mortuis vel oppres-  
 De sub-  
 mersis. sis vel p infortunium vel alio modo extinctis fieri  
 debet inquisitio, simili modo erit inquirendum, qui  
 præsentes fuerint, quando tales submersi fuerunt, op-  
 pressi vel subitō mortui, & tunc videantur corpora  
 defunctorum nuda & aperta, qualitercunque fuerunt  
 mortui, ut sciri possit, utrum ibi sit felonia vel infor-  
 tunium, secundū quod perpendi poterit per signa  
 exteriora, ut si invenientur plagæ apertæ vel brussuræ  
 per ictus orbos, vel si jugulati fuerunt, secundū quod

<sup>1</sup> "hospites et hospitæ," MSS. Rawl. C. 160 and 159.

Let it also be inquired whether the dead man was known or unknown, and where he lodged on that night, and according to the result of the inquiry the host and the guests shall be attached, and the entire family found in the house where he has been lodged.

5.  
If known  
or un-  
known.

But if there be any person who has run away on account of the persons slain, and respecting whom any suspicion is entertained that he is culpable, let the coroners forthwith visit that person's house, and diligently inquire what chattels he had, and what corn in his barn, if he should be a villein, and if he should be a free man, what free land he held and what it is worth, whether there be corn on the land or not. And when they have made this inquiry, let them cause the corn and the chattels to be appraised at the price at which they can be forthwith sold, and the free land at how much it is worth by the year, and let them forthwith deliver them to the entire township to answer for their value before the justices, saving however the services due to the lords of the fees. And all these inquiries having been made, let the dead bodies of the slain be buried, which if they have been buried before such an inquest has been made and the coroners have seen them, the whole township shall be liable to be amerced.

6.  
If the  
slayer has  
run away.

f. 122.

But if an inquest ought to be held upon persons drowned and suddenly dead, or smothered, or by mischance or in any other way deprived of life, in a similar manner an inquiry shall be made, who were present when such persons were drowned, smothered, or suddenly dead, and then let the corpses of the defunct be inspected nude and uncovered, in whatever manner they may have died, so that it may be known whether there be felony or mischance in the matter, according as may be concluded from external signs, as if there be found open stripes, or bruises by blows which have not cut, or if they have been strangled, according as may be inferred

7.  
Concern-  
ing the  
drowned.

perpendi poterit per signum impressionis funiculi colum constringentis, vel per aliam læsionem in corpore inventam, & secundùm hoc procedere debent coronatores ad inquisitionem in forma supradicta, & facere attachiamenta de corporibus & rebus, secundùm quod malefactores inventi fuerint, vel non inventi.

8.  
Quæ sunt  
deodanda.

Item batelli, de quibus tales submersi fuerint, apprecientur, & alia quæ sunt causa mortis alicujus, & sunt deodanda pro rege, ut si submersus fuerit quis in aqua dulci, & non in mari, ubi nec navis nec maeremium, si navis fracta, erit deodanda, quia ista omnia erunt dominorum, si vivant, sicut eorum catalla: nec sunt deodanda ex infortunio in mari, nec wreckum, nec etiam murdrum<sup>1</sup> de occisis vel submersis in mari.<sup>2</sup> Et si nulla inveniatur felonia, sed quòd subito mortui sunt vel per infortunium, tunc attachiare debent inventorem usque ad adventum justitiariorum, & similiter omnes illos, qui in societate illa fuerunt, ubi tale accidit infortunium.

#### CAP. VI.

1.  
De officio  
corona-  
toris in  
thesauris  
inventis.

Item de officio eorum, si thesaurus dicatur inveniri, & de attachiamentis inde faciendis. Inprimis, inquirere debent ab eis qui inde rectati sunt, & si aliquis inde inventus sit seysitus, vel si præsumptio faciat contra aliquem quòd thesaurum invenerit, eò quòd quis abundantius se habuerit in victu & ditiùs in vestitu ut suprà. Et si aliquis talis inveniatur (ut suprà) attachiari debet per quatuor vel per sex plegios & plures, si possint inveniri.

<sup>1</sup> "murdrum." It would thus appear that the common law of the realm as to murder did not apply to the high sea.

<sup>2</sup> "in mari," omitted in MS.

Rawl. C. 160. The whole passage "Item batelli" down to "in mari" inclusive is omitted in MS. Rawl. C. 159.

from the sign of the impression of a rope confining the neck, or from some other lesion found on the body, and according to this the coroners ought to proceed to the inquest in the form above stated, and to make attachments of persons and of things, according as the malefactors have been found or not found.

Likewise let the boats, out of which such persons have been drowned, be appraised, and the other things which are the cause of the death of any one, and let them be deodands for the king, as if a person should have been drowned in fresh water, and not in the sea, where neither the ship nor its timber, if the ship should break up, will be a deodand, because all those things will belong to the owners, if they live, as being their chattels; nor are there deodands from mischances on the sea, nor is there wreck, nor even murder in respect of those slain or drowned in the sea. And if no felony be found, but that they have suddenly died or by mischance, then they ought to attach the finder until the arrival of the justices, and in like manner all those, who were in their society, when such mischance occurred.

8.  
What are  
deodands.

## CHAPTER VI.

And it is of their office, if treasure be said to have been found, and of attachments thereupon to be made. In the first place they ought to inquire of those who have been reported thereon, and if any one has been found seised, or if there be a presumption against any one that he has found treasure, from the circumstance that a person has indulged himself more abundantly in food and more richly in dress as above said, and if any such an one be found as above, he ought to be attached by four or six securities.

1.  
Of the  
office of the  
coroner in  
treasure-  
trove.

## CAP. VII.

1.  
De officio  
corona-  
torum in  
raptu vir-  
ginum.

Est etiam eorum officium in raptu virginum, quòd si quis ab aliqua de raptu fuerit appellatus, & factum recens fuerit, secundùm quod multotiens videri poterit per judicia certa, ut si hutesium levatum fuerit & recenter persecutum & ruptum vestimentum, & si non ruptum, sanguine tamen intinctum, tunc attachietur appellatus per sex vel quatuor vel plures si tot inveniri possunt, si autem non, ad minus per duos quòd sit, &c. ut suprà. Si autem factum recens non fuerit, nec hutesiũ recenter levatum, nec signa appareant, quæ recenter præsumptionē inducant, sufficit si appellatus attachietur per duos.

## CAP. VIII.

1.  
f. 122 b.  
De officio  
corona-  
torum de  
pace et  
plagis.

Est etiam eorum officium in appello de pace & plagis, ut si quis de pace & plagis fuerit appellat<sup>9</sup>, in primis videnda erit plaga, et si plaga mortalis fuerit, et appellat<sup>9</sup> inveniatur, statim capiatur & capt<sup>9</sup> detineatur, donec sciatur, utrum vulnerat<sup>9</sup> convalescere possit vel non, si autem non & moriatur, appellati retineantur in prisiona. Si autem cõvalescat, attachietur appellat<sup>9</sup> p 4. vel p plures, secūdum q plaga fuerit major vel minor, si autem ibi fuerit mahemium, tunc p plures ut fiat ibi bona securitas. Si autem plaga simplex fuerit, tunc sufficit, si per duos. Et si advena fuerit & ignotus de longinquo veniens, peregrinus, vel si pro penuria amicorum plegios invenire non possit, ej<sup>9</sup> sit plegius gaola, quæ ad custodiendum deputatur & non ad puniendum.

2.  
De officio  
vicecomitis  
in appello

Cùm quis alium appellaverit de pace & plagis, videre debet coronator plagas illas, & illas mensurare cuj<sup>9</sup>



## CHAPTER VII.

It is also their office in case of the rape of virgins, that if any one be accused by any one of rape, and the fact has been recent, according to what may frequently be seen by certain judgments, as if the hue has been raised and recently followed up, or if the robe has been rent, and if not rent, is nevertheless tinged with blood, then the party accused shall be attached by six or four or more, if as many can be found, but if not, at least by two, that he may be &c. as above. But if the deed has not been recent, nor the hue recently raised, nor any signs are apparent which recently raise a presumption, it is sufficient if he be attached by two persons.

1.  
Of the  
office of  
coroners  
in the rape  
of virgins.

## CHAPTER VIII.

f. 122 b.

It is also the duty (of the coroners) on an accusation concerning peace and blows, as where a person has been accused of [breaking] the peace and of wounding, in the first the wound is to be inspected, and if the wound should be mortal and the accused person be found, let him be arrested immediately, and when arrested let him be detained, until it be known whether the wounded person can get well or not, but if he cannot get well and should die, let the accused person be detained in prison. But if he gets well, let the accused person be bound over by four [sureties] or more, according as the wound is more or less serious, but if there be any mayhem, then by more, so that the security may be good. But if it be a simple wound, then it is sufficient, if by two. But if he be a new comer and unknown coming from a far distance, a traveller, or if he cannot find sureties from want of friends, let his surety be the gaol, which is appointed for custody and not for punishment.

1.  
Of the  
office of  
the coroner  
concerning  
peace and  
blows.

When a person has accused another of breaking the peace and of wounding, the coroner must inspect the

2.  
Of the  
office of  
the sheriff  
in an accu-

de pace  
et plagis  
amensu-  
randis.

sunt longitudinis, & cuj<sup>9</sup> profunditatis, sive factæ fuerint in capite sive alibi, & quibus armis, & hæc oīa faciet irrotulari cum testimonio vic. si præsens fuerit in inquisitione facienda, vel saltem in coñ, si appellum factum sit in coñ.

3.  
Si plaga  
periculosa  
sit, ponan-  
tur appel-  
lati in  
prisonam,  
nec sunt  
per plegios  
dimittendi,  
sed viden-  
dum in  
cujus pri-  
sona sunt  
custodi-  
endi, s. in  
prisona  
illius, qui  
habet po-  
testatem  
judicandi.

Appellati verò de morte hominis, & de pace et plagis periculosus, statim capiantur, et in prisonam detrudā-  
tur, & ibi custodiantur, donec p dñm regem p plegios  
dimittantur, vel p judicium deliberentur, vel donec de  
eis petatur curia Christianitatis si clerici fuerint, cujus-  
cūq, ordinis vel dignitatis fuerint. Appellati verò de  
forcia salvò attachientur, quousq, appellati de facto con-  
vincantur. Sed videndū in cuj<sup>9</sup> prisona debeāt, cū  
capti fuerint, remanere: sive capti fuerint p latrocinio,  
sive morte hominis, vel p alia felonia. Et sciendum,  
quòd non nisi in prisona ipsi<sup>2</sup>, qui tales posset in  
curia sua judicare, sicut dñs rex, qui potestatem habet  
judicandi de vita & membris, vel tollendi vitam vel  
concedendi. Ut si felo convictus fuerit p morte homi-  
nis, vel p alia felonia, ultimo puniatur supplicio, sicut  
morte, vel membrorū truncatione.

4.  
De proba-  
tore et  
socke et  
sacke.

Item concedendi vitam vel membra, sicut dicitur de  
pbatore, de quo nullus prisonam habere poterit, nec de  
eo placitum habere, nisi ipse dñs rex, cū nullus alius  
ei posset vitam concedere vel membra. Et hæc vera  
sunt, nisi sit aliquis in regno, qui regalem habeat  
potestatem in omnibus, sicut sunt civitates,<sup>1</sup> comites  
Paleys, salvo dominio domino regi sicut principi, vel si  
sit aliquis qui de concessione domini regis talem habeat

<sup>1</sup> "civitates," omitted MSS. Rawl. C. 160 and 159.

wounds, and measure them of what length they are and of what depth, whether they have been made on the head or elsewhere, and with what arms, and he shall cause all these things to be enrolled with the certificate of the sheriff, if he should be present in making the inquest, or at least in the county, if the accusation should be made in the county.

But let the parties accused of the death of a man or of peace [broken] and of dangerous blows be forthwith seized and thrust into prison, and there kept in custody, until they be released on sureties by the king himself or they be set free by a judgment, or until the court Christian, if they be clergy, be applied to concerning them, of whatever order or dignity they may be. But parties accused as accessories let them be safely secured, until those charged as principals have been convicted. But it is to be seen, in whose prison they ought to remain, when they have been seized, according as they have been seized for robbery or the death of a man or for some other felony. And it is to be known, that they are not to remain in the prison of any one, except of him, who can judge such persons in his own court, such as the lord the king himself, who has the power of judging concerning life and limb, either of taking away or granting life. As if a felon be convicted for the death of a man or for another felony, let him be punished by the most extreme punishment, such as by death or by mutilation of the limbs.

Likewise of granting life or limb, as is said of an approver, concerning whom nobody but the king himself can exercise imprisonment, nor hold a plea, since no one else can grant him his life or limb. And these things are true unless there be some one in the realm, who has regal power in all things, such as cities, counts palatine, saving the dominion of the lord the king as prince, or if there be any one, who by a grant from

libertatem, sicut sock & sack, tolnetum, team, hinfangtheffe & hutfangtheffe,<sup>1</sup> qui inventus fuerit seysitus de aliquo latrocinio, sicut hondhabbende & bacberende, & unde, qui tales habent libertates, habebunt prisonam suam de talib<sup>9</sup>, quia possunt tales in curia sua judicare.

f. 123.  
5.  
Quod pri-  
sones non  
debent de  
terris suis  
disseysiri,  
sed inde  
debent  
sustentari.

Prisones verò sic imprisonati, antequam convicti fuerint, de terris suis disseysiri non debent, nec de reb<sup>9</sup> suis quibuscunq, spoliari, sed dum fuerint in prisona, debent de pprio in omnibus sustentari, donec per iudicium deliberati fuerint, vel condemnati, & si fortè ante condemnationem in prisona obierint, terra remaneat hæredibus, & catalla remaneant parentibus & amicis, quamvis manifestè appareat, quòd tales forent condemnandi si iudicium expectassent, secundum q dicitur, quòd si aliquis sub incerto causæ eventu in vinculis vel sub fidejussorib<sup>9</sup> decesserit, ejus bona confiscanda non erunt. Nec cùm quis in carcerem duct<sup>9</sup> fuerit, spoliari eum bonis oportebit, sed post condemnationem.

6.  
De inquisi-  
tione faci-  
enda utrum  
appellati  
sunt odio  
et atya.

Sed cùm iniquum est, quòd innocentes, sicut illi qui criminosi non sint, diu inclusi detineantur in carcere, ideò ad lacrymosam querelā parentum & amicorum, de gratia dñi regis, fieri solet inquisitio, utrum hujusmodi imprisonati p morte hominis culpabiles essent de morte illa vel nō, & utrum appellati essent odio vel atya. Et breve de hujusmodi inquisitione nulli debet denegari. Forma brevis talis est.

7.  
Breve de  
inquisi-  
tione.

Rex vic. salutem. Præcipimus tibi, quòd p pbos & legales homines de cōm tuo diligenter inquiras, utrum

<sup>1</sup> "Sok, Sak, Thol, Theam, Infangenthes, et Utfangenthes," MS. Rawl. C. 160.

the lord the king has such a franchise as *sock* and *sack*, *toll* and *theam*, *hinfangtheſe* and *lutfangtheſe*, who has been found seysed of any robbery as *hondhabende* and *bacberende*, and whereof those who have such franchises, shall have their own prison for such persons, because they may judge such persons in their own court. f. 123.

But prisoners so imprisoned ought not to be disseysed of their lands before they have been convicted, nor to be spoiled of their goods of any kind, but whilst they are in prison, ought to have sustenance from their own property in all manner of ways, until they have been set free or condemned by a judgment, and if by chance they shall have died in prison before condemnation, their land shall remain to their heirs, and their chattels to their relatives and friends, although it be manifestly apparent that they would have to be condemned, if they had awaited judgment, according to what is said, but if any one, whilst the event of his suit is uncertain, has died either in bonds or under sureties, his goods are not to be confiscated. Nor when a person is cast into prison, ought he to be spoiled of his goods, but only after condemnation.

5. That prisoners ought not to be disseysed of their lands, but ought to be sustained from them.

But since it is iniquitous that innocent persons, such as those who are not criminous, should be detained for a long time shut up in prison, therefore at the sorrowful complaint of relations and friends, by the favour of the lord the king, an inquisition is accustomed to be held, whether persons of this kind imprisoned for the death of a man were culpable for his death or not, and whether they have been accused from enmity and hatred. And a writ for an inquisition of this kind ought to be denied to nobody. The form of the writ is as follows.

6. Of holding an inquisition, whether they are accused through enmity or hatred.

The king to the viscount greeting. We enjoin you that you inquire diligently through good and loyal men

7. Writ of inquisition.

A. de N. captus & detent<sup>us</sup> in prisona nostra, de tali loco de morte B. unde rectatus & appellatus est, rectatus sit vel appellatus de morte illa odio & atya, vel eo quòd inde culpabilis sit: & si odio & atya, quo odio & qua atya, vel quis inde culpabilis sit, & inquisitionem quam inde feceris vic.<sup>1</sup>

8. Et cùm vic. miserit inquisitionem, & p inquisitionem culpabilis inveniatur, non erit ulteriùs per ballium dimittendus. Si autem dicat inquisitio, quòd per odium & p atyam, & contineatur causa in inquisitione quo odio vel qua atya, diligenter erit causa examinanda, cùm sint plures &c. & ballivi qui non sine causæ cognitione in hujusmodi inquisitionibus prætendunt non causam ut causam, & si sufficiens fuerit causa, p balliū dimittatur usq. adventum justitiariorum, alioquin remaneat in prisona &c. In omni verò injuria, & transgressionem contra pacē dñi regis cum adjectione feloniae, solet quilibet appellat<sup>us</sup> vel rectat<sup>us</sup> p plegios dimitti, præterquam de morte hominis, quocūq. tempore, donec imprisonat<sup>us</sup> p inquisitionē doceat se esse immunē, nec fieri debet inquisitio de aliquo, nisi de eo qui fuerit in prisona. Cùm autē p inquisitionē constiterit, q imprisonat<sup>us</sup> appellat<sup>us</sup> fuerit odio vel atya, & nō in eo q culpabilis sit, tunc ad pceptū dñi regis cōmittatur p ballium p breve vic. directu in hac forma.

9. Rex vic. salutē. Quia cōstat nobis p inquisitionē quam tibi facere pceperim<sup>us</sup>, & quam nobis misisti, ut sic inseratur tota forma inquisitionis &c. Tibi præcipimus &c., vel fit quandoq. sic, sine forma inquisitionis.

<sup>1</sup> "feceris et cetera" is the reading of MSS. Rawl. C. 160 and 159.

of your county, whether A. of N. [who is] seized and detained in our prison at such a place concerning the death of B. of which he is charged and accused, has been charged and accused from enmity and hatred, or upon the ground that he is culpable; and if from enmity and hatred, from what enmity and from what hatred, or who is thereof culpable, and the inquisition which you have made thereon for the viscount.

And when the viscount has sent the inquisition, and through the inquisition he has been found culpable, he shall not be releasable on bail. But if the inquisition say by enmity and hatred, and in the inquisition the cause is contained by what enmity and hatred, the cause shall be diligently examined, since there are several persons, &c. and bailiffs, who not without knowledge of the cause in such inquisitions put forth a non-cause as a cause, and if the cause shall be sufficient, let him be dismissed by the bailiff, up to the arrival of the justices, otherwise let him remain in prison &c. But in every assault and trespass against the peace of the king with the addition of felony, any one accused or arraigned is accustomed to be released on sureties, except concerning the death of a man, at any time, until having been imprisoned he shall show by an inquisition that he is innocent, nor ought there to be an inquisition concerning any one except concerning the person who is in prison. But when it shall have been established by an inquisition, that the person imprisoned has been accused through enmity and hatred, and not on the ground that he is culpable, then upon the precept of the lord the king let him be committed to bail by a writ directed to the viscount in this form.

The king to the viscount greeting. Seeing that it is clear to us through the inquisition, which we have enjoined you to make and which you have sent to us, so that there may be inserted the entire form of the inquisition &c. We enjoin you &c., or it is sometimes done

8.  
If by the inquisition he has been found culpable.

9.  
If he be not culpable, let him be dismissed on sureties.

Præcipim<sup>9</sup> tibi, qd' si A. capt<sup>9</sup> & detent<sup>9</sup> in prisona nra p morte B. unde rectat<sup>9</sup> est vel appellat<sup>9</sup>, invenerit tibi xij. ppos & legales homines de com tuo qui manucapiat habedi eū ad primā assisam &c. corā justitiariis nostris ad respōdendū de morte ipsi<sup>9</sup> B. unde eum appellat, tunc eum tradas in ballium<sup>1</sup> illis xij. pbis hominib<sup>9</sup> usque ad pdictum adventum justitiariorum, & habeas ibi nomina xij. prædictorum hominū, qui manuceperint habendi eum, ut prædictum est. Teste, &c.

f. 123 b.

10.  
Aliud  
breve de  
eodem.

Vel aliter: Si A. capt<sup>9</sup> p morte B. & imprisonat<sup>9</sup> apud talem locum, invenerit tibi xij. ppos & legales homines de com tuo, qui manucapiat habendi eum coram justitiariis &c. ad standum recto, de morte prædicti B. unde appellat<sup>9</sup> est, tunc ipsum A. tradas p ballivum prædictis xij. hominib<sup>9</sup> à prisona liberatum, modo quo prædictum est, & catalla sua ei deliberari facias, & habeas ibi nomina xij. &c. Si quis autem imprisonatus fuerit infra libertatem aliquam p morte hominis, vel alia felonia, & balliv<sup>9</sup> libertatis talem fortè non deliberaverit ad mandatū vic., tunc fiat breve vic. quòd eum deliberet, non obstante libertate in hac forma.

11.  
Si captus  
infra libertatem  
et dilata fuerit  
deliberatio  
et captor  
attachiatur  
quod sit  
ad respondendum,

Rex vic. salutem. Satis recolimus tibi præcepisse aliàs vel sæpiùs, quòd A. qui capt<sup>9</sup> est apud talem locum infra talem libertatem & in prisona detentus, deliberari faceres, desicut non est capt<sup>9</sup> p morte hominis, vel alia occasione quare non sit deliberand<sup>9</sup> & replegiandus, & adhuc in contemptum nostri, & contra præceptum nostrum, in prisona nihilominus detinetur,

<sup>1</sup> "in ballio," MS. Rawl. C. 160.



thus, without the form of the inquisition. We enjoin you, that if A., [who is] seized and detained in our prison for the death of B., whereof he has been arraigned or accused, has found for you twelve good and loyal men of your county, who will be sureties to produce him at the first assise &c. before our justices to answer concerning the death of B. himself, whereof he accuses him, then deliver him up on bail to those good men until the aforesaid arrival of the justices, and have there the names of those twelve men aforesaid, who have undertaken to produce him as aforesaid. Witness &c.

Or in another manner. If A. seized for the death of B. and imprisoned at such a place, has found for you twelve good and loyal men of your county, who undertake to produce him before the justices &c. to stand his trial concerning the death of the aforesaid B., whereof he is accused, thereupon deliver up A. himself by the bailiff released from prison to the aforesaid twelve men, in the manner as aforesaid, and cause his chattels to be delivered up to him, and have there the names of the twelve men, &c. But if any one has been imprisoned within any franchise for the death of a man or any other felony, and the bailiff of the franchise has not by chance released such person at the mandate of the viscount, then let a writ go out to the viscount, that he release him, notwithstanding the franchise, in the following form.

The king to the viscount greeting. We sufficiently recollect that we have enjoined you, at other times and repeatedly, that you cause to be released A. who has been seized in such a place and within such a franchise and is detained in prison, since he is not seized for the death of a man, or on another occasion wherefore he should not be released and bailed, and he is still detained in prison in contempt of us and contrary to our injunction, as it is given to us to understand, we enjoin you, if it be

f. 123 b.  
10.  
Another writ on the same subject.

11.  
If he has been seized within a franchise and his release has been deferred, and the seisor is attached, that he be ready to

quare  
talem cepit  
et impri-  
sonavit.

sicut nobis datur intelligi: tibi præcipim<sup>2</sup>, quòd si ita est, non obstante libertate ipsius talis, in propria psona tua sine dilatione accedas apud talem locum, & prædictum A. sine dilatione deliberari facias, ne ad nos de eo iteratò querela perveniat. Et si B. uxor ipsius A. fecerit te securum de clamore suo &c. tunc pone p vadium & salvos &c.<sup>1</sup> omnes ballivos prædictæ libertatis talis, qui sic illum in priona detinuerunt, quòd sint coram &c. ad respondendum prædicto A. de prædicta transgressionem et imprisonment. Et habeas &c. Teste &c.

## CAP. IX.

1.  
De clerico  
impriso-  
nato.

Si clericus capt<sup>2</sup> fuerit p morte hominis, & petatur in curia Christianitatis de eo, qualiter cōmittend<sup>2</sup> erit episcopo, & qualiter episcopus debeat eum custodire.<sup>2</sup> Cū verò clericus, cujuscunq, ordinis vel dignitatis, captus fuerit p morte hominis, vel alio crimine & imprisonment<sup>2</sup>, et de eo petatur curia Christianitatis ab ordinario loci sicut archiepiscopo vel episcopo vel eorum officiali, vel aliis literas prædictorum deferentibus, imprisonment<sup>2</sup> ille statim eis deliberetur,<sup>3</sup> sine aliqua inquisitione inde facienda, non tamen ut omnino deliberetur ut vagans sit<sup>4</sup> p patriam, sed salvò custodiatur,<sup>5</sup> vel in priona ipsius episcopi vel ipsius regis, si ordinarius hoc voluerit, donec à crimine sibi imposito se purgaverit cōpetenter, vel in purgatione defecerit, ppter q debeat degradari. Et ideò, ut prædictum est, si petatur, erit liberandus curiæ Christianitatis, quia non habebit rex de eo prisonam, quem judicare non

<sup>1</sup> "salvos plegios omnes," MS. Rawl. C. 160.

<sup>2</sup> "Si clericus . . . custodire." Head-note in MS. Rawl. *id.*

<sup>3</sup> "liberetur," MS. Rawl. *id.*

<sup>4</sup> "vagantes sint," MS. Rawl. *id.*

<sup>5</sup> "custodiantur," MS. Rawl. *id.*

so, notwithstanding the franchise of such a person himself, you go in your own person without delay to such a place, and cause the aforesaid A. to be released without delay, so that no renewed complaint should be made to us. And if B. the wife of A. has satisfied you concerning her complaint &c., then bind over by sureties all the bailiffs of the aforesaid franchise, who have detained him in prison, that they be present &c. to answer to the aforesaid A. concerning the aforesaid trespass and imprisonment. And have &c. Witness &c.

answer,  
why he  
has seized  
and im-  
prisoned  
such a  
person.

## CHAPTER IX.

If a clerk be seized for the death of a man, and an application be made in the court of Christianity concerning him in what way he shall have to be committed to the charge of the bishop, and in what way the bishop ought to have the custody of him. When then a clerk, of whatever order or dignity, has been seized for the death of a man or any other crime, and has been cast into prison, and an application has been made in the court of Christianity respecting him by the ordinary of the place, such as the archbishop or the bishop or their official or others exhibiting the letters of the aforesaid, let the prisoner be at once delivered up to them, without any inquisition to be made thereon, not however that he should be altogether set free, so that he may wander about the country, but he may be kept in safe custody either in the prison of the bishop himself, or of the king himself, if the ordinary wills this, until he shall have properly purged himself of the charge brought against him, or have failed in his purgation, and thereupon he ought to be degraded. And therefore, as has been said above, if he is applied for, let him be delivered up to the court of Christianity, for the king shall not have a right to imprison him, whom he cannot judge, neither can he

1.  
Concern-  
ing a clerk  
cast into  
prison.

potest, nec clericos degradare, quia nō potest eos ad ordines p̄movere, secundū q̄ p̄dictum est.

2.  
Cum in  
curia  
Christiani-  
tatis de-  
fecerit in  
purgatione,  
et si apos-  
tata fuerit.  
f. 124.

Cū autem clericus sic de crimine convictus degra-  
detur, non sequitur alia p̄na pro uno delicto, vel plu-  
ribus ante degradationem perpetratis. Satis enim suf-  
ficit ei pro p̄na degradatio, quæ est magna capitis  
diminutio, nisi fortē convictus fuerit de apostasia, quia  
tunc primò degradetur, & postea per manum laicalem  
comburatur, secundū quod accidit in concilio Oxon̄,  
celebrato à bonæ memoriæ S. Cantuarien̄ archiepiscopo,  
de quodam diacono qui se apostatavit p̄ quadam Ju-  
dea, qui cū esset per episcopum degradat⁹, statim  
fuit igni traditus per manum laicalem. Si autem sit  
aliquis ordinarius qui in curia Christianitatis, clerico  
sic ei liberato, purgationem indicare (sine accusatore  
coram eo de novo accusante) noluerit, tunc fiat ei breve  
ex parte domini regis in hac forma.

3.  
Breve si  
ordinarius  
noluerit ei  
purgatio-  
nem in-  
ducere,  
cum sit ei  
liberatus.

Rex tali ordinario salutem. Audivimus quòd cū  
quidam clericus de morte hominis rectatus, vel appel-  
latus, vel indictatus coram justitiariis nostris product⁹  
esset, & ibi vobis sicut clericus liberatus, ut se coram  
vobis purgaret, & se inde redderet innocentem si pos-  
set, non vultis (ut dicitur) ad purgationem p̄cedere,  
nisi sit aliquis, qui de novo coram vobis in foro eccle-  
siastico versus eum p̄sequatur, & instituat accusationem.  
Et quoniam p̄ accusationem factam in curia nostra, de  
morte illa satis habetur suspectus, & per talem diffam-  
ationem & indictam̄tum, nihil aliud restat nisi quòd  
coram vobis admittatur purgatio, quæ quidem fieri  
deberet, si laicus esset in curia nostra, si ordo impedi-

degrade clergy, since he cannot promote them to orders, as has been said above.

But when a clerk so convicted of a crime is degraded, no other punishment follows for one offence or for several perpetrated before his degradation, which is the great forfeiture of civil rights, unless by chance he be convicted of apostacy, because then he should be first degraded and afterwards burnt by a lay hand, according to what happened in the council of Oxford,<sup>1</sup> celebrated by Stephen archbishop of Canterbury of good memory, concerning a certain deacon, who apostatised for a certain Jewess, who, when he had been degraded by the bishop, was immediately committed to the flames by a lay hand. But if there be any ordinary, who is unwilling to impose a purgation in the court of Christianity upon a clerk so delivered up to it, without an accuser accusing him afresh before him, then let a writ issue to him from the part of the king in this form:

The king to such an ordinary greeting. We have heard, that when a certain clerk arraigned or accused or indicted of the death of a man was brought before our justiciaries, and there delivered over to you as being a clerk, that he might purge himself before you and thereupon render himself innocent if he could, you are not willing to proceed to a purgation, unless there be some one who will prosecute him anew before you in the ecclesiastical court, and set out an accusation. And since by an accusation made in our court he is sufficiently suspected of that death, and through such a defamation and indictment nothing else remains than that his purgation should be made before you, as it would have to be done, if he were a layman, in our court, if his orders did not

2.  
When in the court of Christianity he has failed to purge himself, and if he shall be an apostate.  
f. 124.

3.  
Writ, if the ordinary is unwilling to impose upon him a purgation.

<sup>1</sup> Probably a council held at Oxford, A.D. 1222, under Stephen Langton archbishop of Canterbury (1216-1228), in which complaints were made against Simon de Mont-

fort, and wherein were made 49 canons, conformable to those of the Lateran Council of A.D. 1215, and in which the Albigenses were condemned.



mentum non daret, & licet nūllus sequeretur, nos p pace nostra sequi deberemus. Vobis mandamus, quòd secundum q idem talis se purgaverit coram vobis, vel non, quod vestrum fuerit exequamini. Teste, &c.

4.  
De custo-  
dia eorum,  
qui sunt in  
prisonam  
mittendi,  
et qui per  
plegios  
dimittendi,  
et de car-  
ceris frac-  
tione.

Cum autem (secundum quod prædictum est) non sunt quidam in carcerem detrudendi in levioribus criminibus, sed p plegios dimittendi, si plegios dare possint, nisi tam grave scelus eum admisisse constat,<sup>1</sup> ut nec fidejussoribus, nec militibus cōmitti debeat, sed ut carceris pœnam & inclusionē sustineat, æstimare debet vic. utrum in carcere recipienda sit psona, an fidejussoribus tradenda, & hoc vel p criminis, quod objicitur, qualitate & enormitate, vel ppter honorem & amplissimas facultates, vel p innocentia personæ, vel p ejus dignitate, qui accusatur. Sed cum p criminis qualitate in carcerem recepti fuerint, conspiraverint, ut ruptis vinculis aut fracto carcere evadant, ampliùs quàm causa, p qua recepti sunt, exposcit puniendi sunt, videlicet ultimo supplicio, quamvis ex eo crimine innocentes inveniantur, ppter quod inducti sunt in carcerem & imparcati. Sed si sit aliquis inter tales qui conspirationem eorum detexerit, talis à pœna liberabitur.

#### CAP. X.

1.  
De crimi-  
nosis, qui  
statim  
fugiant  
post feloni-

Dictum est de illis, qui præsentibus sunt, vel capi possunt in felonia facta in publico, pluribus astantibus & videntibus, sicut in quibuscunque congregationibus. Sed quia sunt quidam, qui statim fugiunt post feloniam

<sup>1</sup> "admisisse eum constet." MSS. Rawl. C. 160 and 159.

raise an impediment, and although no one would pursue him, we ought to pursue him for our own peace. We command you, that according as the same person shall purge himself or not before you, you execute what shall be your duty. Witness &c.

But since (according to what has been said above) some persons are not to be thrust into prison on lighter charges, but are to be released on sureties, if they can give sureties, unless it is clear that he has admitted so great a wickedness, that he ought not to be delivered up to sureties nor to knights, but should sustain the penalty of prison and confinement, the viscount ought to estimate whether the person is to be received in prison, or to be delivered up to sureties, and that in consideration of the quality and enormity of the crime with which he is charged, or on account of his honour and very ample means, or for the innocency of his person, or for the dignity of him who is accused. But when in consideration of the quality of their crime they have been received into prison, [and] they have conspired, that by breaking their chains or breaking through their prison they may escape, they are to be punished to a greater extent than the cause, for which they have been received, requires, for instance with the most extreme punishment, although they may be found innocent of that crime, on account of which they have been cast into prison and immured. But if there be any one amongst them, who has revealed their conspiracy, such a person shall be released from punishment.

4. Of the custody of the property of those, who are to be sent into prison, and of those who are to be released on sureties, and concerning prison-breaking.

#### CHAPTER X.

We have spoken of those, who are present or may be seized in a act of felony done in public, several persons standing by and seeing it, as in some assemblies. But because there are some persons, who forthwith betake

1. Of criminal persons who take to flight im-

am, et tunc & capi non possunt, statim post tales levetur hutesium, qualiter secta fieri debet post tales, et quorum quidam sunt in franco plegio, et quidam de manupastu alicujus. f. 124.

& fiat post eos secta, de villa in villam, quousque malefactores capiantur, alioquin tota villata in misericordia regis remanebit. Qualiter autem secta fieri debet, quaelibet patria habet suum modum, & eodem modo levetur hutesium. Si quis per infortunium mortuus fuerit, oppressus, vel submersus, vel quocunq, alio modo interfect<sup>o</sup>, dum tamen non sciatur quis sit interfecto, sed sequi non oportet in hiis casibus de villa in villam, nec de terra in terram, dum tamen hutesium levatum sit, cū sit quasi capt<sup>o</sup> malefactor. De eo autē qui sic fugam ceperit, diligenter erit inquirendū si fuerit in franco plegio & decenna, & tunc erit decenna in misericordia coram justitiariis nostris,<sup>1</sup> quia non habent ipsum malefactorem ad rectum, licet per alios ante iterum capt<sup>o</sup> fuerit<sup>2</sup> & prisonæ liberatus, ex quo per decennam non est captus nec pductus. Si autem extra francum plegium fuerit talis in aliqua villa receptatus, erit villata in misericordia, nisi talis sit ille qui fugit, quod in decenna & franco plegio esse non debeat: ut magnates, milites & eorum parentes, clericus, liber homo, & hujusmodi, secundū consuetudinem patriæ, & quo casu tenebitur ille, in quibusdā partibus, de cujus fuerint familia & manupastu, & p eis respondebit, nisi consuetudo patriæ aliud inducat, quod pro manupastu suo non debeat respondere: sicut in cōm Hertford,<sup>3</sup> ubi non respondet quis p manupastu suo p aliquo delicto, nisi redierit post feloniam, vel post delictum eum receptaverit, ut de itinere M. de Pateshull in cōm Hertford,<sup>3</sup> anno regni H. quinto. Archiepiscopi, episcopi, comites & barones, & omnes qui habent sok & sak, toll & team, et hujusmodi libertates, milites suos & pprios servientes, armigeros, s. dapiferos

<sup>1</sup> "nostris," omitted in MSS.  
Rawl. C. 160 et 159.

<sup>2</sup> "ante tempus captus fuerit,"  
MS. Rawl. C.160.

<sup>3</sup> "Hereford" MSS. Rawl. C. 160

and 150.



themselves to flight after a felony and cannot be seized, let the hue be raised after them, from vill to vill, until the malefactors are captured, otherwise let the whole district (villata) be amerced to the king. But how the pursuit ought to be made, each country has its own mode, and let the hue be raised in that same mode. If a person has died by a misfortune, suffocated or drowned or killed in some other way, whilst it is not known who killed him, in these cases it is not incumbent to pursue from vill to vill nor from land to land, provided however the hue has been raised, when the malefactor has been as it were captured. But concerning the person who has thus taken to flight it will have to be diligently inquired, if he was in frankpledge and in a tithing, and then the tithing will be amerlicable before our justices, because they have not produced the malefactor for trial, although he has been captured again by others beforehand and delivered to prison, since he has not been captured and produced by the tithing. But if he be out of frankpledge and received into some vill, the district of the vill will be amerlicable, unless the person who has run away, ought not to be in a tithing or in frankpledge; as for instance magnates, knights and their relations, a clerk, a freeman, and such like according to the custom of the country, and in which case the person, of whose family and household he may be, will be liable in some parts, and he shall be responsible for them, unless the custom of the country introduces a different principle, that he ought not to be responsible for his household; as in the county of Hertford, where a man is not responsible for his household for any delinquency, unless he has returned after a felony, or he has received him after his delinquency, as upon the iter of Martin de Pateshull in the county of Hertford, in the fifth year of the reign of king Henry. Archbishops, bishops, counts, and barons, and all who have sok and sak, toll and team, and franchises of such kind, ought to keep their knights, and proper servitors,

mediately  
after a  
felony, and  
then how  
pursuit is  
to be made  
after them,  
and some  
of whom  
are in  
frank-  
pledge, and  
some are  
members  
of a house-  
hold.

f. 124 b.

Leg. Edw.  
Confess.  
23.  
Britton,  
l. i. ch. xxx.  
§ 4.  
Fleta 112.

& pincernas, camerarios, coquos, pistoros, sub suo *fridh-burgo* habere debent. Item & isti suos armigeros & alios sibi servientes, quod si cui forisfecerint, ipsi dñi sui habeant eos ad rectum, & si non habuerint, solvant p eis fortisfacturam.<sup>1</sup> & sic erit observandum de omnib<sup>2</sup> aliis, qui sunt de alicujus manupastu. Quia omnis homo sive liber sive servus, aut est aut debet esse in franco plegio aut de alicujus manupastu, nisi sit aliquis itinerans de loco in locum, qui non plus se teneat ad unum quàm ad alium, vel quid habeat quod sufficiat p franco plegio, sicut dignitatem vel ordinem vel liberum tenementum, vel in civitate rem immobilem. Et secundùm leges Edwardi regis, omnis, qui est ætatis duodecem annorum, facere debet sacramentum in visu franci plegii, quòd nec latro vult esse nec latroni consentire, & in franco plegio esse debet omnis, qui terram tenet & domū, qui dicuntur *husfastene*,<sup>2</sup> & etiam alii qui illis deserviunt, qui dicuntur *folgheres*, quia nec debet quis à se repellere servientem suum, antequam purgatus sit de omni calumnia, unde priùs fuit calumniatus. Item de manupastu alicujus est ille & familia, qui est ad victum & ad vestitum, vel ad victum tantùm cum mercede, sicut sunt famuli vel servientes & domus mercenarii.

2.  
Quod  
prima  
nocte dici  
poterit un-  
cuth, se-  
cunda vero  
gust, ter-  
tia nocte  
hoghene-  
hyne.

Item secundùm antiquam consuetudinem, dici poterit de familia alicujus, qui hospitatus fuerit cum alio per tres noctes, quia prima nocte dici poterit *uncuth*,<sup>3</sup> secūda verò *gust*,<sup>4</sup> tertia nocte *hoghenehyne*.<sup>5</sup> Et in fine notandum, quòd potest quis alium recipere in franco plegio, sicut *borghye aldere*,<sup>6</sup> quando voluerit

<sup>1</sup> "forisfacturam," MS. Rawl. C. 160.

<sup>2</sup> "hussefesten," MS. Rawl. C. 159.

<sup>3</sup> "nunchout," MS. Rawl. id.

<sup>4</sup> "gest," MS. Rawl. C. 160;

"chout," MS. Rawl. C. 159.

<sup>5</sup> "hogenhyne," MS. Rawl. C. 160.

<sup>6</sup> "borgyaldre," MS. Rawl. id.

"borgysaldre," MS. Rawl. C. 159.

armour-bearers that is, stewards and butlers, chamberlains, cooks, bakers under their *Fridhburg*. Likewise they also must keep their armour-bearers and other servitors, but if they have incurred forfeit to any one, let their lords themselves produce them for trial, and if they do not so, let the lords themselves pay the forfeit for them, and so it shall be observed of all who are of anybody's household. Because every man whether free or a serf, either is or ought to be in frankpledge, or in somebody's household, unless he be somebody itinerant from place to place, who does not keep himself to one more than to another, or who has something which suffices for frankpledge, as a dignity or an order or a free tenement, or real property in a city. And according to the Laws of King Edward, every one who is of the age of twelve ought to make oath at the view of frankpledge, that he is not a robber nor will conspire with a robber, and every person who has land and house, who are called "householders," ought to be in frankpledge, and also others who serve them, who are called "followers," for neither ought a person to repel from himself his servitor, before he is purged from every charge, of which he has been previously charged. Likewise he is of the household and family of any one, who has food and clothing from him, or who has food only with wages, such as are the domestics or servitors and hirelings of the house.

Likewise according to ancient custom, he may be said to be of any one's family, who has dwelt in the house of another person for three nights, because on the first night he may be termed uncuth,<sup>1</sup> but on the second gust,<sup>2</sup> on the third night hoghenehyne.<sup>3</sup> And in the end it is to be noted, that a person may receive another in frankpledge

<sup>1</sup> "Uncuth," Anglo-Saxon, unknown.

<sup>2</sup> "Gust," that is, guest.

<sup>3</sup> "Agen hina," Anglo-Saxon, his own hind or domestic.

Britton, l. i. ch. xiii. § 1.  
Fleta 40. pro voluntate sua, sed non poterit illum à franco plegio dimittere cum voluerit, nec vice versa, ut videtur, cum quis se posuerit in francum plegium alicujus vel decennam, vel ex antiquo secutus fuerit cum decenna, non poterit se retrahere, cum voluerit.

f. 125.

## CAP. XI.

1.  
Qualiter  
reus crimi-  
nosus sit  
requiren-  
dus, et si  
non veniat,  
qualiter  
utlagan-  
dus.

Britton,  
l. i. ch. ii.  
§ 9.

Cum autē quis se ita subtraxerit, ppter homicidium vel aliud crimē, de beneficio principis & gratia vocabit, quòd veniat responsur<sup>o</sup> & ad stādum recto, si sit aliquis qui versus eum loquatur, alioquin nō erit statim vocand<sup>o</sup> sine secta alicujus, quia cum absenti reo gravia crimina intentētur, sententia festinari non solet, sed vocari ut requiratur, non utiq; ad pœnam, sed ut potestas sit ei purgandi se si poterit se purgare: & dabitur ei temp<sup>o</sup> legitimū, scil. mensium quinq; quod est infra quintū coñ ad standum recto, & ad respondendū appellanti de crimine ei imposito, qui si infra tēp<sup>o</sup> illud non venerit, p exlege tenebitur, cum principi non obediāt nec legi, & extunc utlagabitur, sicut ille qui est extra legem, sicut Laughelesman.<sup>1</sup> Si autē infra tempus illud venerit & respondeat secundū legem terræ, tunc deducat. Si autem post talem interrogationē infra temp<sup>o</sup> illud reversus moriatur, & se nondum purgaverit, ad hæredes suos proprios transmittit hæreditatem, licet revera culpabilis sit, amittit tamen catalla sua ppter fugam.

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<sup>1</sup> "Laghelesman," MS. Rawl. C. 160.

as a principal surety, whenever he wishes at his own will, but he cannot dismiss him when he pleases from frankpledge, nor vice versâ, as it seems, when a person has placed himself in the frankpledge of another, or in a tything, or has followed from ancient time with a tything, he cannot withdraw himself from it when he pleases.

## CHAPTER XI.

f. 125 b.

When indeed any person has so withdrawn himself on account of homicide or any other crime, by the beneficence and grace of the prince he shall be called to come to make answer and to stand on his defence, if there is any one who will speak against him, otherwise he is not to be forthwith called without the suit of some one, because when grave crimes are charged against an absent defendant, sentence is not usually hastened, but he is accustomed to be called that he may be required, not indeed for punishment, but that he may have the power to purge himself, if he can purge himself, and a legitimate time shall be allowed to him, namely five months, that is within the fifth county [court] to stand on his defence and to answer to the accuser concerning the crime imputed to him, but if he should not have come within that time, he shall be held to be an outlaw, since he does not obey the prince nor the law, and he shall be thenceforth declared an outlaw, like him who is out of [the protection of] the law, *Laughelesman*.<sup>1</sup> But if he come within that time and answers according to the law of the land, then let him be led forth. But if after such a search after him having returned within that time he should die, and has not as yet purged himself, he transmits his inheritance to his right heirs, although he be in truth culpable, he loses however his chattels by his flight.

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<sup>1</sup> Lawless-man in modern English.

2.  
Cum malefactor fu-  
gam ceperit, qualiter  
interrogandus erit  
in comitatu, et de  
comitatu in  
comitatum,  
et qui sequi  
debeant et  
possunt.

Cùm autem malefactor fugā ceperit, oportet q̄ sit qui sequatur fugientē, qui loquatur de visu & auditu, quòd fugitivus, vel q̄ redeat ad pacem infra temp<sup>9</sup> præfinitum, vel quasi inobediens legi, secundū legem terræ utlagetur in comitatu, & ibi proponat oīa verba appelli, ac si fugitiv<sup>9</sup> præsens esset, & adjiciat in appello & accusatione sua, q̄, si inculpatum vidisset, verus ipsum loqueretur. Ad hujusmodi verò sectam faciendā, non admittitur quilibet de populo, nisi ad ipsum pertineat sequi propter parentelam fortè, eò q̄ est sanguine & parentela conjunct<sup>9</sup> interfecto, & quo casu cùm plures sint appellantes, p̄pinquior parens semper p̄fertur remotiori. Si autē extrane<sup>9</sup> fuerit qui sequitur, admittitur ad sequendū, ut si homagio obligat<sup>9</sup> fuit interfecto, vel dominio, ut si fuit de manupastu, vel familia interfecti, & dicat se plagā vel vincula, vel quid tale in ipsa interfectione recepisse, & ad hoc admittitur tam ille qui est infra ætať q̄ ille qui est plenæ ætatis, dum tamen ætas minoris expectetur, & cùm ad ætatem p̄venerit, non habebit locum contra ipsum exceptio de secta minùs ritè facta, quin p̄cedat appellū, & sic videtur de aliis qui appellum non haberent, si appellatus præsens esset, & exciperet contra personam appellantis, licèt aliter videatur quòd bene valeat secta à quocunq̄ & indeterminatè, cùm non sit qui excipiat contra illum qui sequitur.

Britton;  
l. i. ch.  
xxiv. § 1.  
Fleta 47.

3.  
In quibus  
mulier

Non autem habet appellū fœmina nisi de morte viri sui, inter brachia sua interfecti, vel de corpore suo

But when a malefactor has taken flight, there ought to be some one to follow the fugitive, to speak from sight and hearing,<sup>1</sup> that he is a fugitive, either that he should return to the peace [of the king] within a pre-defined time, or as being disobedient to the law should be according to the law of the land outlawed in the county [court], and let him there state all the words of the charge, as if the fugitive were present, and let him in the charge and his accusation add that if he shall see the person charged, he shall speak against him. But to make this kind of suit let not any one of the people be admitted, unless it appertains to him by relationship to pursue him, by reason that he is of blood and relationship connected with the slain person, and in which case when there are several accusers, the nearest relation is always preferred to the more remote. But if he be a stranger who pursues, he is admitted to sue, as for instance if he be bound by homage or by lordship to the slain person, as if he be of the household or of the family of the slain, and says that he has received a cut or bonds or something of that sort in the very act of slaying, and for this purpose let there be admitted as well one who is below age equally as one who is of full age, provided the age of the minor be waited for, and when he shall have come of age, there shall be no place for an exception against him on the ground of the suit having been not rightly made, so as to prevent the accusation being proceeded with, and so it seems concerning others who have no [right of] accusing, if the person accused be present and he except to the person of the accuser, although it may otherwise seem that a pursuit by any person whatsoever is valid and indefinitely so, when there is no person to except against him who pursues.

A woman however has not the right of accusing, except concerning the death of her husband, slain between

2.  
When a malefactor has taken flight, in what way he is to be sought for in the county, and from county to county, and who ought and may pursue him.

3.  
In what cases a

<sup>1</sup> "from sight and hearing." The oath de visu et auditu (Glanville, 1. 2. c. 3.) was abolished by Stat. Westm. I. ch. 41. (3 Edw. I.)

habet ap-  
pellum.

Magna  
Charta,  
c. 34.

Glanville,  
l. 4. c. 13.

Britton,  
l. i. ch.

xxiv. § 7.

ib. ch. xxiii.  
§ 5.

f. 125 b.

pprio, p q alicui judici debeat lex apparens. Et notandum, q non est aliquis, qui sequi possit versus alium de aliqua feloniam per attornatum, dum tamen ille, qui queritur & sequi deberet, potens sit sui, ita quòd sequi possit, & si p aliquod tempus fuerit impotens, quòd parens vel amicus pro eo sequatur propter impotentiam, cùm potens effectus fuerit, cessabit attornatus, & ut dicitur, non debet alius sequi ad utlagationem pro aliquo, nisi esset interfecto ita conjunctus parētela vel homagio, quòd si appellatus præsens esset, jaceret inter illos appellū, & si vic. comitatus sine secta aliquem interrogaverit in comitatu ad utlagādum sine præcepto justitiariorum, erit in misericordia. Item, si cautè agant vic. in comitatu, examinare debent factum, p quo quis interrogandus erit, quia quamvis feloniam adjiciatur in appello, tamen quodlibet factum non continet sub se feloniam, quamvis aliquando contineat injuriam & transgressionem.

4.  
Quis utla-  
gari possit  
et debeat.

Item videndū, quis utlagari possit & debeat ad alius sectam, & quis non. Et sciendū, q quilibet masculus, dum tamen sit duodecem annorum & ampliùs, quia omnes talis ætatis aut sunt aut esse debent in decenna, vel in eo q tantūdem valet, sicut in manu-pastu & hujusmodi ut suprā.

5.  
Quod ali-  
quis non  
possit utla-  
gari qui  
infra duo-  
decim an-  
nos fuerit,  
et quod  
fœmina  
non potest  
utlagari,

Minor verò, & qui infra ætatem duodecem annorum fuerit, utlagari non potest, nec extra legem poni, quia ante talem ætatē non est sub lege aliqua, nec in decenna, non magis quàm fœmina, quæ utlagari non potest, quia ipsa non est sub lege, i. Inlaughe<sup>1</sup> anglicè, s. in franco plegio sive decenna, sicut masculus duodecē annorum & ulteriùs, & ideo non potest utlagari, wayviari tamen bene potest & p derelicta haberi, cùm

<sup>1</sup> "Inlaghe, anglice," MS. Rowl. C. 160.



her arms or concerning her own person, through which the law ought to be apparent to any judge. And it is to be noted that there is not any one, who can pursue after another for a felony by an attorney, provided he who complains and ought to pursue is competent so that he can pursue, and if he has been infirm for some time, that his relation or friend may pursue for him on account of his infirmity, when he has recovered his strength, the attorney shall cease, and as it is said, no person ought to pursue to outlawry for another, unless it be for a person slain, so connected by relationship or homage, that if the accused party were present, an appeal would lie between them, and if the viscount of a county without a suit shall have sought for any one in the county so as to outlaw him without a precept from the justices, he shall be amerçiable. Likewise if the viscounts in the counties act cautiously, they ought to examine into the character of the act, wherefore a person is to be sought for, for although felony be charged in the appeal, nevertheless it is not every act which comprises a felony, although it sometimes contains an injury and a trespass.

woman has  
a right of  
accusing.

f. 125 b.

Likewise we must see, who may and ought to be outlawed at the suit of another person, and who not. And it is to be known, that any male person, provided he is of twelve years of age or more, because all of such age are or ought to be in some tything, or in that which is equivalent, as in a household or such like, as above.

4.  
Who may  
and ought  
to be out-  
lawed.

But a minor or a person who is below twelve years of age, cannot be outlawed nor placed out of the [protection of the] law, because before that age he is not under any law, nor in a tything, no more than a woman, who cannot be outlawed, because she is not under the law, that is, inlaughe in English, in other words, in frankpledge or a decenna, as a male of twelve years and upwards, and therefore she cannot be outlawed, she may however well be waived and left derelict, when for any felony

5.  
That a  
person  
cannot be  
outlawed,  
who is of  
less than  
twelve  
years of  
age, and  
that a  
woman  
cannot be

sed way-  
viari.

Britton,  
l. i. ch. xiii.  
§ 3.

p feloniam aliqua fugam fecerit sive ceperit. Est enim wayviū quod nullus advocat, nec princeps eam advocabit nec tuebitur cū fuerit ritē wayviata, sicut fit de masculo qui secundū legem terræ ritē fuerit utlagat<sup>o</sup>, extunc enim gerunt caput lupinū, ita q sine judiciali inquisitione ritē pereunt, & secum suū iudicium portant, & meritō sine lege pereant, qui secundū legem vivere recusaverint, & hæc ita, si cū capiendi fuerint fugiant, vel se defendant: si autē vivi capti fuerint vel se reddiderint, vita illorū & mors erit in manu domini regis.

6.  
Qualiter  
quis sequi  
debeat, et  
quot comi-  
tatus.

Itē qualiter quis sequi debeat, & infra q temp<sup>o</sup> videndum, & sciendū quōd ad sectam & appellum ipsius, qui sequi debet & poterit, interrogari debet appellatus ad quatuor comitatus, de comitatu in comitā, donec appellat<sup>o</sup> utlagetur, sub hac tamen observatione, q ad primū comit non fiat nisi simplex vocatio, & comitat<sup>o</sup> ille primus non computabitur infra tempus utlagationis, nec erit un<sup>o</sup> ex quatuor comitā, quia semper oportet quinque, præteriri antequā quis sit utlagatus, & secundū hoc ad quartum comit, qui revera dici poterit quintus, & in quo non admittitur essonium, nec audiend<sup>o</sup> erit, si quis manucapere vellet appellatū, de habendo ipsum ad alium comit, quia sic posset protrahi tempus utlagationis in infinitum, quod esse non debet, secundum quod responsum fuerit Richardo Duket per M. de Pateshull, cū esset apud Walsingham<sup>1</sup> in comit Norf. Ad alios verō comit præcedentes bene poterit talis manucapi, dum tamen quilibet comit allocetur pro uno, usque ad quintum. Usq ad quintum verō comit poterit talis per se vel amicos suos (si voluerit) reddere se prisonæ vel defendere se & purgare

Infra, c. xii.  
§ 12.

<sup>1</sup> "Wolsingeham," MS. Rawl. C. 160.

she has made or taken flight. For a waif is that which no one advocates, and no prince will advocate her or protect her, when she has been duly waived, as happens in the case of a man who according to the law of the land has been duly outlawed, for from that time he bears a wolf's head, so that they duly perish without any judicial inquiry, and carry their own judgment with them, and they may deservedly die without [the protection of] law, who have refused to live in accordance with it, and this is so, if they either take flight or defend themselves, when they are to be arrested; but if they have been taken alive or have surrendered themselves, their life and death will be in the hand of the lord the king.

Likewise we must see in what way a person ought to sue and within what time, and it is to be known, that at the suit and appeal of the person himself, who ought to sue and can do so, the person appealed ought to be summoned at four county courts, from county court to county court, until the person appealed is outlawed, subject however to this observation, that at the first county court there be a simple calling, and such first county court shall not be computed within the time of the outlawry, nor shall it be one of the county courts, for five ought always to pass before a person is outlawed, and according to this at the fourth, which may really be called the fifth, and in which no essoin is allowed, nor is any one to be heard, if he wishes to be surety for the person appealed to produce him at another court, for thus the time of the outlawry might be prolonged indefinitely, which ought not to be according to the answer given to Richard Duket by Martin de Pateshull, at Walsingham in the county of Norfolk. But at the other preceding county courts a surety may well answer for such an one, provided, however, each county court be allowed as one, up to the fifth. Up to the fifth county court, indeed, such a person may by himself, or by his friends (if he wishes), surrender himself to prison, or defend himself and purge

outlawed,  
but may be  
waived.

6.  
In what  
way a per-  
son ought  
to sue,  
and at  
how many  
county  
courts.

f. 126. innocentia, post tempus verò illud, qualitercunq, fuerit utlagatus, redire non poterit nisi de gratia principis. Sed si infra tempus illud redierit, ut prædictum est, & se defenderit, restituetur ad omnia, sicut ad pacem & hæreditatē, præterquā ad mobilia, propter fugā. Sed quid si ille, qui sequitur ab initio, ritè non fuerit persecutus, ut si statim, cū posset, hutesium non leverit, nec secutus fuerit ad villas vicinas, nec ad ballivū doñ regis, nec ad coronatores, nec ad primum comitatum ut deceret, si postea sequi voluerit, audiri debet, cū non sit aliquis qui causari debeat vel possit jure, propter sectam min<sup>9</sup> ritè factam.

7.  
De secta  
non rite  
facta.

Si autem cū secta ab initio ritè facta fuit, ille, qui sequitur ad aliquem comitatū, fecerit intervallum, bene poterit sectam suam resumere si voluerit, dum tamen ille comitatus, omissus p negligentiam suam, infra tempora utlagationis non computetur. Et quod dicitur de uno comitatu dicitur de pluribus, quia hoc totū cedit ad commodum appellati propter negligentiam appellantis.

8.  
Si sectam  
resumere  
noluerit,  
sine secta  
non pro-  
cedatur ad  
utlagatio-  
nem.

Si fortè sectam resumere noluerit, vel antequam perfecta fuerit, non pcedatur sine secta in comitatu ad utlagationem, sed expectetur adventus justitiariorum, nisi sit aliquis qui sequi possit & velit, & resummat sibi sectam inceptā donec perficiatur: quæ si ante iter justitiariorum perfecta non fuerit, computatis comitatibus quibus secta prius facta fuerit, dicāt ei justitiarii quòd eam perficiet donec appellatus utlagetur. Si autem non sit aliquis, qui in comitatu sectam in-

his innocence, but after that time, in whatever way he may have been outlawed, he cannot return except by the grace of the prince. But if within that time he shall have returned as aforesaid, and shall have defended himself, he shall be restored to everything, as to the peace [of the king] and to his inheritance, with the exception of his movables on account of his flight. But what if he, who originally pursues, has not duly pursued, as for instance he has not raised the hue immediately, when he could, nor has followed him to the neighbouring vills, nor to the bailiff of the lord the king, nor to the coroners, nor to the first county court, as became him, if he has been willing afterwards to sue him, he ought to be heard, since there is no one who ought or can be blamed, on account of a suit not having been duly made. f. 126.

But if, when a suit has been duly made from the commencement, he who sues at any county court allows an interval to elapse, he may well resume his suit, if he wishes, provided the county court omitted through his negligence is not computed within the time for his outlawry. And what is said of one county court is said of several, because all this interval goes to the benefit of the party accused on account of the negligence of the accuser. 7. Concerning a suit not duly made.

If by chance he should be unwilling to resume the suit, or before it be completed, let there be no proceeding to outlawry without a suit in the county court, but let the coming of the justices be awaited, unless there be some one who can and will sue, and will himself resume the suit already begun, until it is completed: which, if it be not completed before the arrival of the justices, after computing the county courts at which the suit has been previously made, let the justices say to him that he should complete it until the accused party is outlawed. But if there be not any one who will resume 8. If he is unwilling to resume the suit, let no proceeding to outlawry take place without a suit.

ceptam resumpserit, propter sectam prius factam, quæ violentam inducit præsumptionem, & sine aliqua inquisitione, utrum appellatus culpabilis sit vel non, præcipiatur à justitiariis quòd vicecomes cõm sectam perficiat, computatis cõm præcedentibus, quibus prius ante iter secta facta fuit, quod quidem sine inquisitione non fieret, utrum indictatus culpabilis esset vel non, nisi secta & appellum præcessisset. Sola autem fuga non sufficit p se, vel latitatio sine contumacia, ad aliquē utlagandū, nec indictamentū, rectū, vel fama, nisi sit qui sequatur in cõm ante iter justitiar & appellet, vel q à justitiar in itinere præcipiatur comitatu, quòd sequatur ex parte regis de cõm in cõm, donec rectat<sup>o</sup> secund legē terræ fuerit utlagat<sup>o</sup>, facta prius à justitiar inquisitione si nulla præcesserit secta prius in comitatu, utrum indictatus culpabilis sit vel non, quia si secta præcesserit, licet deserta fuerit, tamen talē inducit præsumptionē q non oportet ulterius inquirere, utrū indictat<sup>o</sup> culpabilis fuerit vel non, quia secta p se vel inquisitio p se ad hoc plenè sufficiunt, hoc tamen observato, quòd si inquisitio dicat q indictatus culpabilis non sit, dicatur vicecomiti comitatus, quòd ad utlagationem non procedat. Sed quandocunque talis redierit, remaneat sub plegio ad standum recto, si quis versus eum loqui voluerit. Et unde videtur, vice versa, quòd si per inquisitionem culpabilis inveniatur, & ante utlagationem redierit, quòd non sit per plegios dimittendus, sed

the suit in the county court already commenced, on account of the suit having been previously made, which raises a violent presumption, and without any inquest, whether he be culpable or not, let it be ordered by the justices, that the viscount of the county complete the suit, after computing the county courts preceding, in which the suit has been made before the iter [of the justices], which indeed would not otherwise be done without an inquest, whether the person indicted was culpable or not, unless a suit and a criminal charge had preceded. For flight alone does not suffice by itself, nor hiding, without contumacy, to outlaw any one, nor an indictment, nor a citation, nor public fame, unless there be some one who sues in the county court before the iter of the justices and is an accuser; or because a precept has been made by the justices in their iter to the county court, that it should pursue on the part of the king from county court to county court, until the party cited according to the law of the land has been outlawed, an inquest having been previously held by the justices, if no previous suit has been instituted in the county court, whether the person indicted is culpable or not, because if a suit has been instituted, although it may have been deserted, nevertheless it induces such a presumption that it is not necessary to inquire further, whether the person indicted is culpable or not, for the suit by itself and the inquest by itself suffice fully for that purpose; this, however, being observed, that if the inquest says that the person indicted is not culpable, it should be said to the viscount of the county court, that he should not proceed to outlawry. But whenever such a person shall have returned, let him remain under surety to stand his trial, if any person should wish to say anything against him. And hence it seems, vice versâ, that if he be found culpable by the inquest, and he shall have returned before the outlawry, that he is not to be released on sureties, but to be retained in

sub custodia & in prisiona retinendus, propter inquisitionem præcedentem, donec ab imposito crimine se defenderit. Sed cū præceptum fuerit alicui quoddam sectam, quæ ante iter incepta fuit, post iter perficiat, computatis comitatibus præcedentibus, mori contigerit, vel sequi noluerit post iter, vel infirmitate gravatus sequi non possit, videndum si comitatus sectam perficere possit sine warranto vel iustitiarum præcepto, si coram iustitiariis, & secta non fuerit, perfecta sed derelicta, tunc præcipiant iustitiarum quoddam in comitatu procedatur ad utlagariam sine alia secta.

f. 126 b.

## CAP. XII.

1. Causa verò utlag' esse poterit vera aliquādo, aliquādo præsumptiva: vera enim esse poterit, cū quis nequiter & in feloniam contra pacem regis, pluribus astantibus & videntibus, vel saltē sub visu & auditu alicujus, cujus interfuerit appellare, occisus fuerit vel graviter vulneratus, & mayhemiat' & robbatus, & imprisonatus, vel ligatus, ita quod persequi non possit, & sit aliquis qui sequatur, cū malefactor fugerit & capi non possit, & ita quod factum sub se contineat feloniam. Et propter quod, ut videtur, facta præcedunt sunt diligenter examinanda, quia quedam accidunt ex infortunio, sicut de submersis & oppressis & hujusmodi.

2. Itē, ubi vulneratus evadere poterit mortem per industriam medicorum, curari noluit cū posset, sed in odium periculis se morti exposuit, vel si per imperitiam medicorum

De causa  
utlagationis  
vera et  
presumptiva.  
  
Si vulneratus  
curari  
noluerit,  
cum posset.



custody and in prison on account of the preceding inquisition, until he shall defend himself against the crime imputed to him. But when it shall have been enjoined upon any one that he should complete after the iter the suit, which has been commenced before the iter, the previous county courts having been taken into account, and he shall have happened to die, or he shall be unwilling to sue after the iter, or being incapacitated by bodily infirmity he should not be able to sue, it is to be considered whether the county court can complete the suit without a warrant or injunction from the justices, if it be before the justices and the suit has not been completed but left derelict, then let the justices enjoin that proceedings shall be taken in the county court to outlawry without another suit. f. 126 b.

## CHAPTER XII.

But a cause of outlawry may be sometimes true, sometimes presumptive; for it may be true, when any one wickedly and feloniously against the peace of the king, whilst several are standing by and seeing it, or at least within the sight and hearing of some one, whose interest it may be to accuse him, has been killed or grievously wounded, and maimed and robbed and imprisoned or bound, so that he cannot pursue by himself, and there be some one who can pursue, when the malefactor takes to flight and cannot be taken, and so that the act comprises a felony under it. And on account whereof, as it seems, the preceding acts are to be diligently examined, because some things happen from misfortune, as in the case of persons drowned or crushed, and such like.

Likewise when a wounded person may escape death through the attention of medical men, and he is unwilling to be cured, when he can be so, and through hatred of the man who struck him he has exposed himself to death, or if through unskilfulness of the medical man,

1.  
Of a true,  
and of a  
presump-  
tive cause  
of out-  
lawry.

2.  
If a  
wounded  
person will  
not, when  
he can, be  
treated for  
his cure.

qui pperā medicamentū dederint, vel cū medic' nō esset imputandū, usus fuit cibo & potu vetito, vel fortè obiit morte natūr, & non plaga illa, & hæc oīa à coronā diligent' exāinanda sunt, sed tamē cū secta intervenērit, nō erit ppter hoc utlagaria differēda.

3. Præsumptiva poterit esse, licet nō vera, tum ppter sectā, tum ppter inquisit' fact' corā justit', licet omnino nulla subsit causa, ut si ille qui inficere debuit, viv<sup>9</sup> sit & san<sup>9</sup>, & ille qui debuit inficere, homo meticulousus se subtraxerit ppter sectā & appellt, vel etiā cū in duob<sup>9</sup> coñ esset appellt, in uno se defendit vel prisonæ se reddiderit, & in alio coñ fuerit utlagat<sup>9</sup>. Itē si ille, qui dicit se esse robbatū, imprisonat, vel ligat, nunquā fuit robbat<sup>9</sup> &c.

4. Si nulla subfuit causa. Itē etsi subsit causa tamē min<sup>9</sup> sufficiens, sicut de submersis, & oppressis, & hujusmodi p infortuniū mortuis.

5. Si causa non sit periculosa. Item si plaga, de qua appellat<sup>9</sup> est quis, periculosa non sit, nec mahemiū inducat, tamē ppter psumptionē fugæ & sectā appellantis, pcedendū erit ad utlagationē sive ad utlagariā, & si secta ritè facta fuerit, & secundū legem terræ, tenet utlagaria, licet nulla subsit causa, vel min<sup>9</sup> sufficiens, ppter fugā & ppter sectam. Et eodem modo, coram justitiariis, sine ōnimoda secta,

who has given him wrong medicines, [he has died,] or when the medical man is not to be blamed, he has used forbidden food or drink, or has by chance died by a natural death and not from that wound, and all these things are to be diligently examined into by the coroner, nevertheless when a prosecution has intervened, the outlawry is not on that account to be deferred.

Likewise a cause may be presumptive although not true, as well on account of a suit, as on account of an inquest made before the justices,<sup>1</sup> although there be no substantial cause at all, as if he who ought to have been killed is alive and sound, and he who ought to have killed him, being a timid man, has withdrawn himself on account of the suit and the accusation, or even when there has been an accusation in two counties, in one he has defended himself or has surrendered himself to prison, and in the other county he has been outlawed. <sup>3.</sup> Likewise if he who says that he has been robbed, imprisoned, or bound, has never been robbed &c. <sup>Likewise a presumptive cause.</sup>

Likewise, if there be a substantive cause, but it be insufficient, as in regard to persons drowned or crushed, and such like who have died from misadventure. <sup>4.</sup> <sup>If there be no substantive cause.</sup>

Likewise if the blow concerning which a person is accused, be not dangerous, nor causes maim, nevertheless on account of the presumption of flight and the suit of the accuser proceedings will be had for outlawing or to outlawry, and if the suit has been duly carried on and in accordance with the law of the land, the outlawry is binding, although there be no substantial cause or there is an inadequate cause, on account of the flight and the suit. And in the same way before the justices, without any kind of suit, on account of flight and an indict- <sup>5.</sup> <sup>If the cause be not dangerous.</sup>

<sup>1</sup> The proper beginning of the fourth paragraph would seem to be here.

propter fugam & indictamentum, & inquisitionem factam coram justitiariis. Sed tamen cum talib<sup>9</sup> major gratia fieri debet à principe, quàm cum illis quibus est causa vera, secundū quod inferiùs dicitur.

f. 127.

6.

Si quis fuerit utlagatus ob nullam causam vel minus rationabilem, ei gratia est major, quantum ad inlagationem.

Et quāvis sine causa vera quis utlagatus fuerit, ut si homo qui interfici debuit pducatur vivus, tamen non erit talis utlagaria pronuncianda nulla, cū rex fecerit gratiam utlagato, cū ritē & secundū legem terræ facta fuerit.

7.

Item potest utlagatio pronunciari nulla, et fiat breve regis super hoc, et nulla dici poterit multis rationibus.

Pronuntiari poterit quandoq, utlagaria nulla in suo casu, quamvis subsit causa vel non subsit, vera nec præsumptiva, ut si facta fuerit contra legem terræ, quod esse poterit multis modis, & quæ cū nulla esse pronuntietur, cū facta sit contra legem terræ, de jure deberet utlagatus restitui, & non de gratia. In quo casu, non debet in literis regis contineri, quòd talem utlagariam remitteret, vel perdonaret, quæ nulla est, quia illud quod non est, perdonare non potest, sed denuntiare poterit in civitatibus, comitatibus, burgis, & villis & aliis locis publicis, utlagariam illam esse nullam, & quo casu non habet necesse utlagatus habere breve domini regis de pace, nisi velit ex abundanti, ut cū fuerit restitutus ad omnia debet restitui, & potest sententialiter sine alicujus præjudicio: quia utlagaria illa contra legem terræ facta, debet defieri, quia non tenet. Utlagaria verò, quæ fit secundū legem terræ, licet nulla subsit causa, vel minùs sufficiens, tenet, & ideo remitti potest vel perdonari, sine præjudicio alterius. Et cū talis restitutus fuerit, non

ment and an inquisition made before the justices. Nevertheless, in the case of such persons more grace ought to be shown by the prince than in the case of those, against whom there is a true cause, according to what will be said below. f. 127.

And although a person has been outlawed without any true cause, as if a man who ought to have been killed, is brought forward alive, nevertheless such an outlawry is not to be pronounced null when the king has shown grace to the outlawed person, when the outlawry has been made duly and according to the law of the land.

6.  
If a person has been outlawed for no cause or an unreasonable cause, more grace should be shown to him as regards outlawing him.

An outlawry may be sometimes pronounced null in its own case, although there is or there is not a substantial case, true or presumptive, as if it has been made against the law of the land, which it may be in many ways, and when it has been pronounced as having been made against the law of the land, the outlawed person ought to be reinstated of right and not of favour. In which case, it ought not to be stated in the royal letters that he has remitted such an outlawry or has pardoned it, which is already null, because he cannot pardon that which is null, but he can denounce in cities, counties, boroughs, and vills and other places that such outlawry is null, and in which case it is not necessary that the outlawed person have a writ of the lord the king concerning his peace, unless he wishes from abundant caution, as when he has been restored he ought to be restored to everything, and may be so judicially without prejudice to anybody; because that outlawry, having been made against the law of the land, ought to be unmade, because it does not bind. But an outlawry, which has been made according to the law of the land, although there be no substantial cause, or the cause be insufficient, is binding, and accordingly may be remitted or pardoned without prejudice to another. And when such a person has been restored, he shall not be restored to everything,

7.  
Likewise the outlawry may be pronounced null and a royal writ may be issued thereon, and it may be declared null for many reasons.

restituatur ad omnia, propter utlagariā ritè factā, & secundū legem terræ.

8.  
Quæ dici  
poterit  
nulla, et  
quibus  
rationibus,  
quia minus  
recte facta.

Britton,  
l. i. ch. xiv.  
§ 2.

Nulla verò poterit esse utlagaria, ut si quis in comitatu utlagatus fuerit sine secta, & non refert utrū omnino nulla sit secta vel incepta & non perfecta, ut si incepta & postmodum omissa & neglecta, quia ad utlagationē non pcedetur sine secta. Item nulla, si post iter justitiariorum pcesserit comitatus ad utlagationem sine præcepto & warranto justitiar post inquisitionem. Item nulla, si ad præceptū regis vel sectam regis fuerit quis utlagat<sup>9</sup>, nisi prius facta inquisitione p justitiar, utrū ille qui in fuga est, culpabilis sit de crimine ei imposito vel non. Itē nulla, si fiat alibi quā in comit, præterquam apud London. in hustingo, ut si rex p sua voluntate p literas suas fecerit aliquem clamare utlagatum p civitates, burgos, & villas, & alia loca publica, sine secta (ut prædict' est) vel inquisitione præcedente. Itē erit nulla, si ille, qui malè fuit creditus, mortuus fuit ante utlagationē. Itē nulla, si ille qui interfici debuit, pducatur viv<sup>9</sup> & sanus ante utlagationem, cū nulla subsit causa vera vel psumptiva, secūs tamē si quis post utlagationē. Itē nulla, si comitatus ad utlagationem pcesserit, cū ille qui aliquando secutus fuerit moriatur, vel sequi nolerit, vel non possit. Itē nulla, cū appellatus in uno com̃ se defenderit secundū legem terræ, & in alio comitatu ab alio appellatus, qui sectam fecerit, fuerit utlagatus: quia qui in uno loco se defenderit de uno facto versus unum de pluribus appellantibus & sequen-

on account of the outlawry having been made duly and according to the law of the land.

But an outlawry may be null, as if any one has been outlawed in the county court, without a suit, and it does not matter whether there has been no suit at all, or a suit has been begun and has not been completed, as if it has been commenced and has afterwards been omitted and neglected, because proceedings cannot be had to outlawry without a suit. Likewise an outlawry may be null, if after the iter of the justices the county court has proceeded to the outlawry without a precept or warrant of the justices after an inquest. Likewise it may be null, if a person has been outlawed on the precept of the king or at the suit of the king, without a previous inquest having been held by the justices whether he, he who is in flight, is culpable of the crime laid to his charge or not. Likewise it may be null, if it be made anywhere but in a county court, except in London at the husting, as if the king, according to his will, by his letters has caused any one to be proclaimed an outlaw through cities, boroughs, vills, and other public places, without a suit, as aforesaid, or an inquest preceding. Likewise it will be null, if he, who was of ill repute, has died before the outlawry. Likewise it will be null, if he, who ought to be killed, should be produced alive and sound before the outlawry, when there is no substantial cause true or presumptive; otherwise, however, if he should be produced after the outlawry. Likewise it will be null, if the county court has proceeded to outlawry, when he who has for some time prosecuted dies, or is unwilling to prosecute, or cannot do so. Likewise it will be null, when having been accused in one county court he has defended himself according to the law of the land, and having been accused by some one else who has sued him in another county court, he has been outlawed, because he, who has defended himself in one place concerning one act against one out of several accusing him and prose-

8.  
What may  
be called  
null and  
in what  
ways, be-  
cause it  
has been  
unduly  
made.

tibus in diversis comitatibus, se defenderit contra omnes de eodem facto: si autem diversa fuerint facta, & diversi appellantes, et in uno loco sive diversis locis se defenderit per legem terræ versus unum vel plures, et in aliis comitatibus fuerit utlagatus, nulla erit utlagatio, dum tamen, cū restitutus fuerit, respondeat aliis, & se defendat per legē terræ & oīa sua retinebit, & vice versa, si in uno cōm fuerit condēnat<sup>o</sup>, oīa sua amittet. Et eodē modo cū sciverit se esse appellatū & interrogatū, ante utlagatū se reddiderit prisonæ dñi regis, quia postquā reddiderit se prisonæ dñi regis, non erit ulteri<sup>o</sup> interrogand<sup>o</sup>. Item nulla erit, ut videtur, cū quis semel capt<sup>o</sup> fuerit, vel se gratis obtulerit cū appellat<sup>o</sup> fuerit, & de cōsensu regis & regni exiliū elegerit, & sic secūndū legem exierit, non erit ulteri<sup>us</sup> utlagandus de jure. Item nulla, cū quis interrogatus ante tempus à lege ei concessum utlagetur, cū totum tempus à lege definitum ei cedere debeat ad commodū: & unde videtur quōd si infra tempus illud venerit, & in prisonā se miserit, q̄ audiri debeat sua exceptio, secūds tamen (ut videtur) si post tempus illud. Item nulla, si comitatus aliquem utlagaverit, si fuerit infra ætať, cum secta vel sine secta, quia ante ætať duodecē annorum,<sup>1</sup> non erit quis sub lege, & pri<sup>us</sup> extra legem poni non poterit. Et cum hujusmodi utlagaria in prædict' casibus nulla sit, & consimilibus, de jure (concomitante gratia) ad omnia restituendi sunt, dum tamen appellantib<sup>o</sup> respondeant,

Britton,  
l. i. ch. xiii.  
§ 1.  
Fleta 40.

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<sup>1</sup> Cf. 115 b., also 124 b.



cuting him in different county courts, has defended himself against them all as regards the same act : but if there have been divers acts, and divers accusers, and he has defended himself in one place or in divers places according to the law of the land against one or more, and he has been outlawed in other county courts, the outlawry will be null, provided that when he has been restored, he answers the others, and defends himself by the law of the land, and he shall retain all his goods ; and vice versâ, if he shall have been condemned in one county court, he shall lose all his goods. And in the same manner, if, when he knows that he has been accused and sought after, he has surrendered himself up to the prison of the lord the king, because after he has surrendered himself to the prison of the king, he will no longer be liable to be outlawed. Likewise it will be null, as it seems, when any one has been once captured, or has gratuitously presented himself, when he has been accused, and with the consent of the king and of the realm has elected exile, and if he has gone forth into exile according to law, he will no further be liable to be outlawed rightfully. Likewise it will be null, when any one sought for should be outlawed before the time allowed him by law, since the whole time defined by the law ought to be available to him for his advantage, and hence it seems that, if he has come within that time and surrendered himself to prison, his exception ought to be heard ; otherwise, however, as it seems, if he has come after that time. Likewise it will be null, if the county court has outlawed any one, if he was under age, with a suit or without a suit, because before the age of twelve years a person will not be under the law, and he could not previously be put outside the law. And since this kind of outlawry in the aforesaid and similar cases is null, the persons are to be restored of right to everything (a pardon accompanying them), provided they answer the accusers and defend themselves according to

f. 127 b.

& p legem terræ se defendant. Item videtur nulla esse utlagaria, si factum, p quo quis interrogatus est, civile sit & non criminale, p quo quis vitā amittere non deberet, vel membra. Sola quidam fuga sine contumacia vel crimine, vel causa vera vel psumptiva, utlagationem non inducit, in quibusd tamen criminibus levioribus fuga poenam inducit graviolem, sicut videri possit in eo qui appellatus est in crimine raptus, qui si p̄sens convinceretur, non amitteret nisi tantum membra, amittit tamen quandoq vitam propter fugam factam. Facta autem possunt esse plura & diversa, sicut sunt crimina majora & minora, secundum quod superius dicitur in tractatu de criminibus, & hoc dico si criminaliter agatur, potest quis utlagari p crimine majori vel minori. Itē p raptu virginis cont pacem, & p omī alia trāsgressionē, quæ fit contra pacem, & delicto, ubi feloniam & pax dñi regis adjicitur: secus autem est de pace vicecom̄, & alibi, ubi non recipitur nisi aestimatio damnorum, & ubi non sequitur poena nisi pecuniaria. Item p omni transgressionē, licet minima, ubi quis, ad pacem dñi regis vocatus, venire recusaverit, & hoc propter contumaciam maximē, quæ aliquando absentem condemnat ad mortem, qui si p̄sens esset non amitteret nisi membrum, vel non sustineret nisi imprisonment & redemptionē, vel poenam pecuniariam. Nullum autem majus crimen quā inobedientia, quia p contemptu & inobedientia poterit quis excōmunicari, sicut pro quolibet mortali peccato, cum omnes subditi esse debent regi tanquam p̄celenti, maximē in honestis, & ducibus ejus, tanquam ab eo missis. Et sic concordat lex divina aliquantulum cum humana.

9.  
Item tam  
ille de for-  
cia, quam  
ille de  
facto fuge-  
rint, et  
utlagatur  
quis tam

Causæ quidem utlagationis possunt esse plures, utlagatur enim quis tam ppter forciā<sup>1</sup> q ppter factum,

<sup>1</sup> The word "force" is used in Britton, l. i. ch. ii. to signify the act of an accessory, "et si il ap-

"pele plusours, issi que akuns del fet, et akuns de la force ou des fetz accessoires."

the law of the land. Likewise an outlawry seems to be null, if the act for which a person is sought for, is a civil not a criminal offence, for which a person ought not to lose his life or limb. Flight alone, without contumacy or crime, or a cause either true or presumptive, does not bring on outlawry, but in some lighter crimes flight brings a more severe penalty, as may be seen in the case of him who is accused of the crime of rape, who, if he were present and convicted, would only lose a limb, but he sometimes loses his life on account of taking flight. But acts may be several and divers, as there are greater and minor crimes, according to what is said above in the treatise on crimes ; and this I say, if there be a criminal action, a person may be outlawed for a greater or a minor crime. Likewise for the rape of a virgin against the peace of the king, and for every other transgression, which is against the peace of the king, and [every] delict where felony and the peace of the king is added : but it is otherwise as regards the peace of the viscount, and in other cases, where only an estimate of damages is received, and where there only follows a pecuniary penalty. Likewise for every transgression, even the least important, where any one, summoned to maintain the peace of the king, has refused to come, and this on account of contumacy chiefly, which sometimes condemns an absent person to death, who if he were present would only lose a limb, or would only sustain imprisonment or ransom, or a pecuniary fine. But there is no greater crime than disobedience, for a person may be excommunicated for contempt and disobedience, as for a mortal sin, since all persons ought to be subject to the king as supreme, especially in honest things, and to his officers, as if sent by him. And thus the divine law agrees with human law.

There may be several causes of outlawry, for a person is outlawed as well on account of being an accessory as of being a principal, at the suit of any one or by an

9.  
Likewise  
as well one  
accused of  
being an  
accessory,  
as of being  
a principal,  
if they run  
away, and

propter factum, quam propter forciam, et e contrario. p sectam alicujus vel p inquisitionem coram justitiariis, ut prædict' est, & hoc tamen ordine observato, secundo, dum quosdam, cum diversi diversa sentiant in hac parte.

10. Qualiter et quando pronuntiarari debet utlagaria de facto, et quando de forcia, an statim et eodem die diversa opinio.

f. 128.

Britton, l. i. ch. ii. § 8.

Et si tam ille qui appellatus est de forcia, quā ille qui appellatus est de facto, absentes sint, tunc uterq, simul interrogandus est ad quemlibet com, si non venerit, dum tamen in ultimo com, qui debet esse quintus, differatur pronuntiatio utlagariæ ipsorum qui appellati sunt de forcia, donec factum convincatur, ita q primò, secundum quosdam, pronuntietur utlagaria de eo qui appellatus est de facto, & postea eodem die de eo qui appellatus est de forcia, & sic in eodem judicio. Alii quidem dicunt, quòd non eodem die, nec eodem judicio, sed diversis. Dicunt enim quidam, quòd appellatus de facto & appellatus de forcia non sunt simul interrogandi, sed ille de forcia tunc primò, cum factum convincatur, sive ille de forcia fugerit sive præsens fuerit. Sed ea, quæ dicta sunt, locum habere poterunt, cum uterq, in fugam convertatur, & quo casu præsimitur de utroque, propter fugam, & illud idem dici poterit, ut videtur, si cum ille de facto præsens fuerit, & ille de forcia fugerit, quòd ille de forcia statim exigatur,<sup>1</sup> sed judicium utlagationis remanebit, donec ille de facto se defenderit, vel non defenderit.

11. Si ille de forcia præsens sit et ille de facto fu-

Cum autem ille de forcia præsens fuerit, & ille de facto fugerit, non erit versus eum de forcia procedendum, quousq, factum convincatur. Sed quid si uterq, fugam fecerit, & sit aliquis qui ad aliquem com illum fugitivum principalem de facto manuceperit, ille de

<sup>1</sup> The precept or writ, whereby the accused party was required to appear, was styled an "exigent." Britton terms it "exigende,"

inquest before the justices as aforesaid, and this order, however, having been observed according to some, for different persons have different opinions on this matter.

a person is outlawed on account as well of being an accessory as of being a principal, and the contrary.

And if as well he, who is accused of force, as he, who is accused of an act should be absent, then each is to be sought for at every county court, if he should not have come, provided that at the last county court, which ought to be the fifth, the proclamation of the outlawry of those who are accused of force is delayed, until the act is proved, in such way that in the first place, according to some, the outlawry may be proclaimed of him who has been accused of an act, and afterwards on the same day of him who is accused of force, and so in the same judgment. Others indeed say, that both proclamations should not be made on the same day, nor in the same judgment, but on different occasions. For some say that a person accused of an act, and a person accused of force, are not to be sought for at the same time, but he who is accused of force then for the first time when the act is proved, whether he who is accused of force has taken flight or is present. But those things, which have been said, may have a place, when each has betaken himself to flight, and in which case the presumption is against both on account of their flight, and the same thing may be said, as it seems, when he who is accused of an act is present, and he who is accused of force has taken flight, that he who is accused of force be at once *executed*, but the judgment of outlawry shall stand over until he who is accused of the act has defended himself, or has not defended himself.

10. How and when ought outlawry to be proclaimed of fact, and when of force, whether forthwith and on the same day opinions differ.

f. 128.

But when he who is accused of force is present, and he who is accused of the act has taken flight, proceedings must not be taken against the accessory, until the act be proved. But if both have taken flight, and there be any person who has given bail to produce the principal, who has taken flight, at a county court, let the accessory be

11. If he who is accused of force is present, and he who is accused of the act has taken

gerit, vel  
si uterque. forcia nihilominus interrogetur propter fugam. Dum  
tamen iudicium remaneat, donec factum convincatur.

12.  
Si quis in  
quarto  
comitatu  
velit man-  
cipare non  
audietur.

Si autem sit aliquis, qui ad quartum comitatum velit manucapere appellatum de facto, ut suprâ in parte dictum est, non audietur, secundum quod Martinus respondit Richardo Duket, de quadam eschaeta in com' Kanc. Ad quod facit quod habetis alibi, in itinere M. de Pateshul in com' Wigori, anno regni regis Henrici quinto. Ibi enim dicitur, quod in quarto comitatu non admittitur essonium alicujus appellati, nec audiri debet quis volens talem manucapere usque ad alium comitatum, nisi fortè hoc esset ex præcepto domini regis, quod potius esset voluntariu, quam justu.

13.  
Ille de  
forcia non  
est inter-  
rogandus,  
donec fac-  
tum con-  
vincatur.

Cum autem ambo essent præsentis, ut prædictum est, ille de forcia non erit interrogandus, donec factum convincatur, si cum præsens esset non teneretur prius respondere, nec agit contra ipsum aliqua præsumptio, & hæc est ratio fortè, quia præsentia excusat eum, & fuga induceret præsumptionem. Sed erit talis per plegiu dimittendus, sicut esse deberet, si uterque præsens esset, & ubi ille de facto non est replegiabilis, ille de forcia per plevinam vel ballivum dimittatur, donec appellatus se de facto defenderit, vel non defenderit, quia ubi factum ibi poterit esse forcia quandoque, sed nunquam forcia sine facto, quia ubi principale non consistit, nec ea quæ sequuntur locum habere debent, sicut dici poterit de præcepto, conspiratione, & consimilibus: quamvis hujusmodi esse possunt etiam sine facto, & quandoque puniuntur si factum subsequatur, sed sine facto

nevertheless sought for on account of his flight. Pro-  
vided however that judgment stands over, until the act  
has been proved. flight, or if  
each has  
done so.

But if there be any one who at the fourth county  
court wishes to give bail for any one accused of the  
principal act, as has been said in part, he shall not be  
heard, according to what Martin [de Pateshull] answered  
to Richard Duket concerning a certain escheat in the  
county of Kent. For which also makes what you have  
elsewhere, in the iter of Martin de Pateshull in the  
county of Worcester in the fifth year of the reign of King  
Henry. For it is there said that in the fourth county  
court no essoin is admitted of any one who is accused,  
nor ought any one to be heard who is desirous to give  
bail for such an one to produce him at another county  
court, unless this should be under a precept of the lord  
the king, which would rather be an act of his pleasure,  
than of his justice. 12.  
If any one  
wishes to  
give bail at  
the fourth  
county  
court.

But when both are present, as aforesaid, the acces-  
sory is not to be interrogated until the act has been  
proved, if when he is present he is not bound to answer  
first, nor is there any presumption that makes against  
him, and this is perhaps the reason, because his presence  
excuses him, and flight would raise a presumption against  
him. But such a person may be released on bail, as he  
ought to be if both were present, and where the principal  
party is notailable, the accessory may be released upon  
pledges or bail, until the principal party has or has not  
defended himself, because where there is a principal  
party there may be sometimes an accessory, but never an  
accessory where there is no principal party, because where  
a principal act has no existence, things consequent on it  
can have no place, as may be said of precept, conspiracy,  
and such like, because these things may occur even with-  
out any act, and are sometimes punished if an act is  
subsequent, but without any act not so, like the saying: 13.  
The acces-  
sory is not  
to be inter-  
rogated,  
until the  
act has  
been  
proved.

non, juxta illud: quid enim obfuit conatus, cū injuria nullum habuit effectum. Nec etiam obesse debent p̄ceptū, conspiratio, p̄ceptū & consiliū, nisi factum subsequatur.

14. Cum autem uterq, præsens fuerit, & ille de facto sive p̄sens sive absens condemnatus fuerit, ppter hoc ille de forcia, cū p̄sens fuerit, non erit condemnāus: sed agat causam & se defendat, cū habeat defensiones suas integras, & factum esse poterit sine forcia, & qualiter uterq, se defendere debeat, dicetur infrā plenius de appellatis.

Cum autem uterque præsens fuerit, et ille de facto convictus, qualiter sit procedendum contra illum de forcia.

## CAP. XIII.

1. Cum quis fuerit ita utlagat<sup>o</sup> ritē & secundū legē terræ, videndū quæ forisfaciat p utlagariā, si cū sit quartō vocat<sup>o</sup> non cōparuerit, & sciendū q in primis forisfaciat patriā & regnū, & exul efficitur, & talē vocāt Anglici Utlaughe,<sup>1</sup> & alio nom̄ antiquitus solet nominari, scilicet Frendlesman,<sup>2</sup> & sic videtur quod forisfacit amicos, & unde si quis talē post utlagā & expulsionē sciēter paverit, receptaverit, vel cum eo sciēter cōmunicaverit aliquo modo, vel receptaverit vel occultaverit, ead p̄cena puniri debet, qua puniretur utlagat<sup>o</sup>, ita q careat omnib<sup>o</sup> bonis suis, & vita, nisi rex ei parcat de sua gratia.

2. Sciēter dico, quia aut potest esse not<sup>o</sup> & cognit<sup>o</sup>, vel ignot<sup>o</sup> & incognit<sup>o</sup>, & unde qui notū & cognitū receptaverit, pari p̄cena puniend<sup>o</sup> est, qui dicitur Couthutlaughe,<sup>3</sup> sed de ignoto & incog<sup>o</sup> non est ita, & ad

Cum utlaugh qui sciēter talem receptaverit.

<sup>1</sup> "Utlaughe," MS. Rawl. C. 159.

<sup>2</sup> "Frendlesman," MS. Rawl. C. 160.

<sup>3</sup> "Cuth utlaughe," MS. Rawl.

C. 160; "Cuthutlaughe," MS. Rawl. C. 159.



"For what harm did the attempt cause, since the injury  
"took no effect." Nor ought precept, conspiracy, precept  
and counsel to do harm, unless some act follows.

But when each is present, and the principal whether  
present or absent has been condemned, the accessory shall  
not be condemned on that account, since he is present,  
but he shall plead his cause and defend himself, when he  
has his own independent defence, and the act may have  
been done without an accessory: and how each ought to  
defend himself, will be stated below more fully in dis-  
cussing the subject of appeals.

14.  
But when  
each is pre-  
sent, and  
the princi-  
pal is con-  
victed, how  
proceed-  
ings are  
to be taken  
against the  
accessory.

### CHAPTER XIII.

When a person has been outlawed duly and according  
to the law of the land, we must see what he forfeits by  
outlawry, if when he has been called for the fourth time  
he does not appear, and in the first place he forfeits his  
country and the realm, and he is made an exile, and the  
English call such a person an outlaw, and of ancient time  
he was accustomed to be called a friendless man, and so  
it seems that he forfeits his friends, and hence if any one  
has knowingly fed such a person after his outlawry and  
expulsion, and received and held communication with  
him in any way, or harboured or concealed him, he ought  
to be punished with the same punishment, with which  
the outlaw is punished, so that he should be deprived of  
all his goods and his life, unless the king spares him of  
his grace.

1.  
What an  
outlawed  
person  
shall for-  
feit by  
outlawry,  
and that  
an outlaw  
is called a  
friendless  
man.

I say knowingly, because an outlaw may be known  
and recognised, or may be unknown and unrecognised,  
and hence he, who harbours one who is known and  
recognised, is to be punished with the same punishment,  
and he is termed a "Couthutlaughe," but it is not the  
same in the case of an unknown and unrecognised

2.  
He who  
knowingly  
receives  
such a per-  
son is a  
com-out-  
law.

Dig.  
XLVII.,  
t. xvi.  
Cod. IX.,  
t. xxxix.

hoc facit lex C. de iis, qui latrones & maleficos occultāt, L. prima, ubi dicitur: q̄ eos qui secū alieni criminis reos occultādo vel receptādo cū eis se sociaverint, par ipsos & reos poena expectat. Et etiā latrones quisquis sciēs receperit, qui dicitur receptator malorū, & eos offerre iudiciis supsederit, supplicio corporali plectetur cū amissione bonorū.

3.  
Si fugerit,  
et se defen-  
derit.

Itē forisfacit utlagat⁹ oīa quæ pacis sunt, quia à tēpore, quo utlagat⁹ est, caput gerit lupinū, ita q̄ ab omnib⁹ interfici poterit, & impunè, maximè si se defenderit vel fugerit, ita q̄ difficilis sit ejus captio.

4.  
Si non  
fugerit, nec  
se defen-  
derit.  
Lex Cor-  
nelia.  
Dig.  
XLVIII.  
tit. vii. § 3.

Si autē non fugerit, nec se defenderit cū capt⁹ fuerit, extunc erit in manu dñi regis mors & vita, & qui taliter captū interfecerit, respondebit pro eo sicut pro alio. Hoc verū est, nisi cōsuetudo se habeat in contrariū, sicut in cōm Hertford¹ & Glocester prope marchiā Walliæ. Sed hoc factū aliquando dissimulatur ex causa. Quòd tales, modo quo prædict⁹ est, interfici poterunt & impunè, legitur F. ad legē Jull. de siccariis² & veneficis, ubi dicitur: q̄ transfugas, ubicūq̄ invēti fuerint, interficere licet.

5.  
Quod sola  
fuga non  
inducit.  
f. 129.

Sola tamē fuga non inducit nisi tantū bonorū amissionē, in suo casu, cū coram justitiariis vocati non venerint ante utlagat⁹. Et ad hoc facit F. de requi-

¹ "Hereford," MS. Rowl. C. 160 and 159.

Rawl. C. 160; "ad legem Corneliam," written on an erasure, MS. Rowl. C. 159.

² "ad Jul. de siccariis." MS.

person, and this is in accordance with the law in the Code, "Concerning those who conceal robbers and malefactors," Law the first, where it is said of those who, by concealing and harbouring persons guilty of another's crime, have associated themselves with them, the like punishment awaits them equally as the criminals themselves. And likewise he who knowingly receives robbers, who is termed a receiver of bad men, and neglects to give them up to justice, shall be punished with bodily punishment coupled with the loss of his goods.

Likewise the outlaw forfeits every benefit which belongs to the peace of the king, because from the time when he is outlawed he carries a wolfs-head, so that he may be killed by every one with impunity, particularly if he defends himself or takes to flight, so that his capture is difficult. 3.  
If he has taken flight, and defended himself.

But if he has not taken flight, nor defended himself when he was captured, his death and life shall thenceforth be in the hand of the king, and he who kills a person so captured, shall be responsible for him as for another. 4.  
If he has not taken flight, nor defended himself. This is true, unless the custom is otherwise, as in the counties of Hereford and Gloucester, near the march of Wales. But this act is sometimes dissembled upon a pretext. That such persons in the manner aforesaid may be slain and with impunity is read in the Digest upon the Julian Law<sup>1</sup> concerning assassins and poisoners, where it is said that it is allowable to kill deserters, wherever they may be found.

But flight alone does not entail any thing more than loss of goods in each case, when having been called before the justices they do not come before outlawry. 5.  
That flight alone does not entail outlawry. And this is supported by the Digest concerning the re- f. 129.

<sup>1</sup> The "Lex Cornelia de Sicariis et Veneficiis" was introduced by Lucius Cornelius Sylla in 671, A.U.C. No Julian law directed

against similar offences is on record. The Cornelian Law contains the passage cited by Bracton.

Dig.  
XLVIII.  
t. 17.  
Cod IX.  
t. 40.

rendis reis L. ultima & C. eodem titulo, L. Quicumq, ubi dicitur quòd si post fugam redierit quis, & innocentiam suam purgaverit, nihilominus facultates ejus apud fiscum remanebunt. Item forisfacit ea quæ legis sunt, quia si sine gratia regis, ausu temerario, post utlagariam redierit, sine lege & judiciali inquisitione peribit, nec alios appellare poterit, quia omnem legem amisit: portat enim secum in suo capite suum judicium, ita quòd nullam habebit defensionem, cùm constiterit de utlagaria. Justum est enim judicium, quòd sine lege & judicio pereat, qui secundum legem vivere recusat.

6.  
Forisfacit,  
quæ juris  
sunt.

Itē forisfacit omnia, quæ juris sunt & possessionis, s. & juris competentis & competituri, juris adepti & adipiscendi, & possessionem similiter in forma & modo possidendi. Item nulli tenetur, nec aliquis ei, nec ex aliqua causa obligatur. Dissolvuntur enim obligationes & homagia, fidelitates & sacramenta, & omnia alia quæ mutua voluntate sunt contracta. Item cui? & sciendum quòd sibi ipsi & hæredib<sup>9</sup> suis omnib<sup>9</sup>, tam remotis quàm ppinquis, & sic forisfaciunt hæreditates & teneñta: & taliter fracta & dissoluta, nunquam conjungi poterunt nec redintegrari, nisi ex novo contractu & nova voluntate mutua, si fortè fuerit aliquo casu restitut<sup>9</sup>.

7.  
Item foris-  
facit actionem.

Item ex utlagaria forisfacit actionem ante utlagariam sibi competentem, licèt postmodum de gratia fuerit restitutus, quia semper ei petenti obstat exceptio utlagariæ, dum tamen fuerit secundum legem terræ pmulgata, secus tamen si nulla, ut prædictum est.

quiring of accused persons, the last Law, and by the Code under the same title, the Law commencing "Whosoever," where it is said, "but if he has returned after taking flight, and has cleared his innocence, his goods will still remain confiscated to the treasury." Likewise he forfeits those things which are benefits of the law, because if without the pardon of the king, by a rash act of daring, he has returned after the outlawry, without law and a judicial inquest he will perish, nor will he be able to appeal others, because he has lost all law; for he carries with him on his own head his own judgment, so that he has no defence, when it is clear respecting his outlawry. For it is a just judgment, that he should perish without law or judgment, who refuses to live according to the law.

Likewise he forfeits every thing which is of right or possession, of right accruing or likely to accrue, of right acquired or to be acquired, and all possession in like manner in the form and mode of possessing. Likewise he is bound to no person, and no person is bound to him, nor is he obliged from any cause. For all obligations and homages, all fealties and oaths, and all other matters which are contracts of mutual will are dissolved. Likewise for whom? And it is to be known that it is for himself and all his heirs, as well remote as near, and thus they forfeit inheritances and tenements; and such contracts broken and dissolved, can never be joined together and renewed again, except by a new contract and a new mutual will, if by chance it should be by any accident restored.

Likewise by outlawry he forfeits any action competent for him before outlawry, although he be afterwards of grace restored, because there will always be the exception of outlawry as an obstacle to his claim, provided it has been promulgated according to the law of the land, otherwise, however, if it has been null, as aforesaid.

<sup>6.</sup>  
He forfeits  
all right.

<sup>7.</sup>  
Likewise  
he forfeits  
his action.

8. Item dissolvit utlagaria, sicut quodlibet aliud iudicium de feloniam, donationes & venditiones factas à tempore feloniam ppetratam, & ubi post convictionem cujuscunq, feloniam retrahitur temp<sup>9</sup> ad temp<sup>9</sup> feloniam ppetratam, sicut suprà de donationibus plenius dicitur.

9. Catalla quidem utlagati erunt domini regis, quia utlagari alibi non poterit quàm in curia ipsi<sup>9</sup> regis, sicut in coñ vel in hustingo London. Et idem dicendum est de catallis fugitivorum ante utlagationem, & aliorum qui vocati sunt coram justitiariis, sive culpabiles sint sive non, facta sup hoc inquisitione, & qui, quamvis postea redierint, & prisonam se reddiderint, catalla sua non recuperabunt ppter fugam.

10. Si terram liberam habuerint utlagati, statim capienda est in manum domini regis, & tenenda per unum annum & unum diem, & ad capitales dominos post terminum illum reversura, si de alio tenuerint quàm de rege, tunc erit eschaeta ipsius regis, & hoc verum est, quod per talē terminum remanebit in manu domini regis, nisi ipse capitalis dominus vel alius pro eo finem fecerit pro termino regis habendo. Sed quare sit causa, quare terra remanebit in manu domini regis? videtur quod talis est, quia revera, cum quis convictus fuerit de aliqua feloniam, in potestate domini regis erit psternendi aedificia, extirpandi gardina, & arandi prata. Et quoniam hujusmodi verterentur in grave damnum dominorum, per cōmuni utilitate pvisum fuit, quod hujusmodi aedificia & gardina remanerent, & quod dominus rex propter hoc haberet commoditatem totius terrae illius per unum annum & unum diem, & sic omnia cum integritate reverterentur in manus capita-

Magu.  
Chart. art.  
22 and 32.  
Britton,  
i. ch. vi.  
§ 3.

Likewise outlawry, like any other judgment of felony, dissolves all donations and sales made from the time of the perpetration of the felony, and where after the conviction of any felony the time is traced backward to the time of the perpetration of the felony, as has been stated above more fully on the subject of donations.

8.  
Likewise it dissolves donations, sales, and all contracts and obligations.

The chattels of the outlawed person shall belong to the lord the king, for he cannot be outlawed except in the king's court, as in the county court or in the hustings of London. And the same is to be said of the chattels of fugitives before outlawry, and of others cited before the justices, whether they are culpable or not, after an inquest has been held upon the matter, and who, although they should return afterwards and surrender themselves to prison, shall not recover their chattels on account of their flight.

9.  
That certain of his chattels are forfeited to the king.

But if the outlawed persons have freehold land, it is to be seized immediately into the hand of the lord the king, and to be held for a year and a day, and it is to return to the chief lords after that term, if he has held it from any other than the king himself, in this latter case it shall be an escheat of the king himself; and this is true, that for such a term it shall remain in the hand of the lord the king, unless the chief lord himself, or some one on his behalf, has paid a fine to the king to have the king's term. But what is the cause, why the land shall remain in the hand of the lord the king? It seems to be this, because in truth, when a person is convicted of any felony, he will be in the power of the king to pull down his buildings, to root up his gardens, to plough up his meadows. And since such things would turn to the great damage of the lord, in the common interest it has been provided, that buildings and gardens of this kind should be preserved, and that the lord the king on such account should have the profits of the whole of that land for a year and a day, and so every thing in its integrity

10.  
If he shall have a freehold, let it be seized into the hand of the king for a year and a day.

lium dominorum. Nunc autem petitur utrumque, s. finis pro termino, & similiter pro vasto, & non video rationē quare, nisi quia terminus benè poterit esse p se sine vasto, eò quòd fugitivus & utlagatus non solūm delinquit erga eum qui sequitur & appellat, sed etiam erga regem, cujus pacem infringit, contra fidem suam cui tenetur, quia quilibet, qui facit sacramentum, jurat salva fide domini regis.

11. Rex vicec. salutem. Præcipimus tibi, quòd p sacramentum proborum & legalium hominum de comitatu tuo, diligenter inquiras si terra, quæ fuit talis utlagati, vel suspensi, in tali villa, p morte hominis, vel p alia tali felonia, extiterit in manu nostra per unum annum & unum diem, & de quo prædictus talis terram illam tenuit, & inquisitionem inde factam sub sigillo tuo & sigillis eorum, p quorum sacramentum inquisitio illa facta fuerit, nobis sine dilatione mittas, & hoc breve. Teste &c. Et cū inquisitio venerit, sequitur tale breve.

12. Rex vicec. salutem. Quia constat nobis p inquisitionem, quòd tanta terra cum ptinentiis in tali villa, quæ fuit talis suspensi vel utlagati p morte talis & quam tenuit de tali, extitit in manu nostra per unum annum & unum diem, sicut esse debet secundū consuetudinem regni nostri Angliæ, tibi præcipim⁹, quòd eidem tali, de prædicta terra cum pertinentiis, sine dilatione plenariā seysinā habere facias. Teste &c.

13. Rex vicec. salutem. Præcipimus tibi, quòd si terra quæ fuit A. & qui utlagatus est de regno nostro &



should return into the hands of the chief lords. But now both is required, namely a fine for the term and likewise for the waste, and I do not see the reason wherefore, unless it be because the term may well be by itself without waste, inasmuch as the fugitive and outlaw is not only a delinquent towards him, who sues and accuses him, but also towards the king, whose peace he breaks, against his fealty to which he is bound, because every person, who takes an oath, swears saving his fealty to the lord the king. f. 129 b.

The king to the viscount greeting. We enjoin you, that by the oath of honest and loyal men of your county, you diligently inquire if the land, which was the land of so-and-so outlawed or hung in such a vill, for the death of a man or for some such other felony, which has been in our hand for a year and a day, and from whom so-and-so held that land, and send to us without delay the inquest held thereon, under your seal and the seals of those by whose oath that inquest has been made, and this writ. Witness &c. And when the inquest has come, such a writ as this follows. 11. But when after a year and a day the land has not been restored to the chief lord, upon the complaint of the true lord, let a writ of this kind issue to the viscount.

The king to the viscount greeting. Since it is clear to us by an inquest, that so much land with its appurtenances in such a vill, which was the land of such a person outlawed or hung for the death of another such person, and which he held from so-and-so, has been in our hand a year and a day, as it ought to be according to the custom of England our realm, <sup>1</sup>we enjoin you that you cause so-and-so to have plenary seysine without delay of the said land with its appurtenances. 12. An inquest having been held as to restoring the land to the chief lord.

The king to the viscount greeting. We enjoin you that, if the land which was A.'s, and who is outlawed 13. Another writ con-

<sup>1</sup> Article 22 of the articles presented by the barons to king John was, "ne rex teneat terram eorum, qui fuerint convicti de feloniam,

"nisi per unum annum et unum diem, sed tunc reddatur domino feodi."

eadem, de  
restituenda  
terra.

convictus de latrocinio, extiterit in manu nostra p  
unum annum & unum diem, sicut esse debet secun-  
dum consuetudinem regni nostri, tunc haberi facias B.  
capitali domino seysinam de prædicta terra, quæ fuit  
pdicti A. in balliva tua, & quam tenuit de prædicto  
B. & quæ capta fuit in manum nostrā occasione præ-  
dicta.

14.  
Si terra,  
data in  
maritagium  
cum filia  
alicujus de  
hæreditate  
materna,  
extiterit in  
manu do-  
mini regis  
per annum  
et diem per  
feloniam,  
quam vir  
ipsius filia  
fecit, breve  
de restitu-  
enda.

Rex vicec. salutem. Monstravit nobis A. quòd cum  
B. vir suus, qui mortu<sup>9</sup> est, & ipsa A. dedissent C.  
tantam terram cum pertinentiis in tali villa in mari-  
tagiū cum D. filia sua de hæreditate ipsius A., præ-  
dictus C. rectat<sup>9</sup> de morte E. fugit p morte illa, &  
noluit stare ad iudicium & cōsiderationem cōm talis,  
propter quod prædicta terra cum ptinentiis devenit in  
manum nostrā, & in manu nostra extitit p unum annū  
& unū diem, & eo ampliùs ut dicitur: & ideò tibi  
præcipimus, quòd secundum legem & consuetudinem  
regni nostri Angliæ, prædictæ A. (de cujus feodo præ-  
dicta terra est ut dicit, & ad quam reverti debet se-  
cundum assisam regni nostri) sine dilatione plenariā  
seysinam habere facias, ne ampliùs &c. Teste &c.  
Contingit quandoq, q ille, cui rex terminum suū con-  
cessit, infra annum & diem terram alienat, vel cum  
fortè illam in manu sua tenuerit illam capitali dño  
non restituit, & quo casu fiat breve vic. in hac forma.

15.  
Breve, si  
rex aliena-  
verit infra  
terminum  
suum, vel  
ballivi sui.

Rex vicec. salutē. Præcipe A. quòd justè &c. red-  
dat B. tantam terram cum ptinentiis in tali villa, &  
in quam non habet ingressum, nisi p nos, qui terrā  
illā ei cōmisim<sup>9</sup> p unum annū & unū diem, postquam  
in manus nostras devenit, & quam talis tenuit, qui  
utlagatus fuit p morte talis, vel suspensus, de C. patre

from our realm, and is convicted of robbery, has been in our hand for a year and a day, as it ought to be according to the custom of our realm, you therefore cause seysine of the aforesaid land to be made to B. the chief lord; which land of the aforesaid A. was in your bailliwick, and which he held of the aforesaid B., and which was taken into our hands on the aforesaid occasion.

The king to the viscount greeting. A. has represented to us that when B. her husband who is dead and A. herself have given to C. so much land with its appurtenances in such a vill as a maritage for their daughter D., of the inheritance of the aforesaid A. himself, the aforesaid C. having been cited into court for the death of E., has taken flight for that death and has been unwilling to stand a trial and judgment of such a county court, wherefore the aforesaid land with its appurtenances came into our hand, and has been in our hand for a year and a day, and more than that, as it is said: and accordingly we enjoin you that according to the law and the custom of our realm of England, you cause the aforesaid A. (to whose fee the aforesaid land belongs, as he says, and to whom it ought to revert according to an assise of our kingdom) to have plenary seisin of it without delay, lest further &c. Witness &c. It happens sometimes that he to whom the king has granted his term alienates the land within a year and a day, or when by chance he has kept it in his own hand he has not restored it to the chief lord, in which case let a writ issue to the viscount in this form.

cerning the same, concerning the restitution of the land.

14.  
If land given in maritage with the daughter of a certain person from her mother's inheritance has been in the hand of the king for a year and a day for a felony, which the husband of the daughter has committed, a writ for its restitution.

The king to the viscount greeting. Enjoin A., that he justly &c. restore to B. so much land with its appurtenances in such a vill, and into which he has no entry, except through us, who have committed to him that land for a year and a day, after it came into our hands, and which such a person who has been outlawed or hung for the death of so-and-so, held from C. his father or his

15.  
A writ, if the king has alienated [the land] within his term, or his bailiffs.

vel avo, vel alio antecessore ipsi<sup>o</sup> B. cujus hæres ipse est, & quæ ad ipsum reverti debet tanquam eschaeta sua, ppter prædictā feloniam, vel aliter: & in quam non habet ingressum nisi per nos, qui terminum nostrum, s. p annum & diem ei concessimus, & quæ esse debet eschaeta sua propter feloniam, quam talis fecit, & de qua convictus fuit in curia nostra coram justitiariis, &c.

16. Vel aliter: & in quam non habet ingressum, nisi  
 Item aliud breve de eadem materia. per talem cui nos illam commisimus, habendam per unum annum & unum diem, postquam talis rectatus de morte talis fugit & utlagatus fuit vel capt<sup>o</sup> & suspensus, & qui terram illam tenuit de tali patre vel avo talis,<sup>1</sup> cujus hæres ipse est, & qui tunc fuit infra ætatē, ad quem terra illa debuit reverti post annum & diem, tanquam eschaeta sua, & nisi fecerit &c. summi, &c. Et notandum, quòd nunquam habebit rex annum & diem de aliqua terra, quæ non possit esse eschaeta, ut si felo non tenuit nisi ad terminum vel ad vitam, vel quid tale quod descēdere non posset ad hæredes suos. De materia verò istius brevis inveniri poterit de termino Sancti Michaelis anno regni regis Henrici decimoquinto in comitat. Kanc. de Wilhelmo Musard.

17. Et notandū, quòd in quolibet brevi, per quod petitur  
 Quod nunquam revertitur terra ad dominum capitalem, nisi felonia convicta fuerit. eschaeta propter alicujus feloniam, oportet quòd exprimat<sup>r</sup> (& de qua convictus fuerit), quia nunquam reverteretur terra ad dominum capitalem, nisi felonia convicta fuit aliquo genere convictionum, ut si fuerit suspensus vel utlagatus, vel feloniam cognoverit, & regnum abjuraverit, & hujusmodi. Si autem ante feloniam convictam obierit, quocunq; modo, hæreditas de-

<sup>1</sup> "avo tali," MS. Rawl. C. 160.

grandfather, or some other ancestor of B. himself, whose heir B. was, and which ought to return to him as his escheat, on account of the aforesaid felony or otherwise, and into which he has no entry, except through us, who have granted to him our term for a year and a day, and which ought to be his escheat on account of the felony, which so-and-so has committed, and of which he has been convicted in our court before the justices, &c. f. 130.

Or otherwise: and into which he has no entry, except through such a person, to whom we have committed it to be held for a year and a day, after so-and-so having been cited respecting the death of such an one has fled away and been outlawed or captured and hung, and who held that land from such a person his father, or such a person his grandfather, whose heir he is, and who was then under age, to whom that land ought to return after a year and a day as his escheat, and unless he do so &c., summon &c. And it is to be noted that the king shall never have a year and a day from land which cannot be an escheat, as if the felon has not held it except for a term or for his life, or it be such a thing as cannot descend to his heirs. But concerning the matter of such a writ information will be found in St. Michael's term in the fifteenth year of the reign of King Henry, in the county of Kent, concerning William Musard.

And it is to be noted, that in each writ, by which an escheat is sought on account of a certain person's felony, it is incumbent that it be expressly stated (and of which he has been convicted), because the land should never return to the chief lord, unless there has been a conviction of felony in some way or other, as if he be hung or outlawed, or has acknowledged the felony and has abjured the realm, and such like. <sup>1</sup> But if has died before a conviction of felony, in whatever manner, the inheritance shall

16.  
Another writ in the same matter.

17.  
That the land shall never return to the chief lord, unless there is a conviction of felony.

<sup>1</sup> This would seem to be the proper commencement of paragraph 18.

scendet ad hæredes suos, nisi ita fuerit quodd, conscius criminis & timens sibi suspensionē vel aliam poenam, se ipsum interfecerit, & hæreditas talis erit eschaeta dominorum.

18. Si felo ante feloniam convictam obierit. Si autem furore aut doloris impatientia, vel p infortunium, aliud esse debet.

19. Si donatorem fecerit ante feloniam perpetratam, vel post: quod tenet, si non fuerit felonia convicta, ut suprā. Si autem convicta fuerit, non valet, sed revocabitur, & retrotrahitur temp<sup>o</sup> ad perpetrationem feloniae, & sicut non valet donatio post feloniam perpetratam, ita nec valebit generatio quoad successionem, quantum ad hæreditatem paternā & maternā, cū sit pgenit<sup>o</sup> talis ex testiculo & sanguine felonis.

20. Item non valebit felonis generatio, nec ad hæreditatem paternam vel maternam habendam. Si autem ante feloniam generationē fecerit, talis generatio succedet in hæreditate patris vel matris, à quo non fuerit felonia perpetrata.

21. Exemplum de filio senatoris. Propriis autem hæredibus forisfacit hæreditatem suam ppriam, propinquis & remotis, s. quicquid tenuit tempore feloniae perpetratae, & qualitercunq, & secundūm quod tenuit. Et ad ea quæ dicta sunt, quodd tenet donatio si antequam convictus fuerit moriatur, quia defuncto eo, qui reus fuit criminis, extincta est poena.

22. Quod nihil forisfacit quis ante. Sed nihil forisfacit antequam convictus fuerit vel condemnatus, quia dicit lex, quodd post contractum crimen capitale donationes factæ valent, nisi condemnatio

descend to his heirs, unless it should happen that conscious of his crime and afraid of being hanged or of some other punishment, he has slain himself, and the inheritance shall be an escheat of the lords.

But if he has through phrensy or impatience of grief or by misadventure, it shall be otherwise.

And the same will be the result if he has made a donation before the perpetration of a felony or after; which holds good, if he has not been convicted of the felony, as above. But if he be convicted of a felony, the donation does not avail, but it will be revoked, and the time is carried back to the perpetration of the felony, and as a donation after the perpetration of a felony does not avail, so neither will generation avail for succession as regards a paternal or maternal inheritance, since such a person is begotten of the testicle and blood of a felon.

But if he has generated a son before his felony, such a generation will succeed in the inheritance of the father and of the mother, being from a time when no felony has been perpetrated.

But he causes his proper heirs to forfeit their proper inheritance, both near and remote heirs, that is whatever he held at the time of the perpetration of the felony, and in whatever manner and according as he held it. And in regard to what has been said, a donation holds good, if, before he should be convicted, he dies, because by the death of the person, who is accused of a crime, the penalty is extinguished.

But he forfeits nothing before he has been convicted or condemned, because the law says, that donations made after a capital crime has been committed are valid, un-

18.  
If the felon has died before a conviction of felony.

19.  
If he has made a donation before a conviction of felony or after.

20.  
Likewise the generation of a felon will not avail for a paternal or maternal inheritance.

21.  
An example from the son of a senator.<sup>1</sup>

22.  
That a person forfeits nothing before he

<sup>1</sup> The title of this paragraph is not appropriate to the subject matter, but the same title is found in the Index prefixed to the printed editions of 1569 and 1640.

quam fuerit secuta sit. Quod autem ritè factum est ante crimen convictus. contractum, irritari non debet, sicut dicit alia lex, Dig. l. quòd nec corrumpi nec mutari potest, quod ritè trans- xxxix. actum est, superveniente delicto. Si autem filius & t. v. § 15. hæres ppinquior, in vita patris feloniam fecerit, & patrem supervixerit & convictus fuerit, cùm jus merum ei descenderit, sive seysinā de hæreditate habuerit sive non, forisfacit sibi & hæredibus suis successionem, & ita quòd, cùm jus ad hæredes descendere non possit, de necessitate revertitur ad capitalem dominum feoffatorem, & licèt talis seysinam non habuerit, tamen seysina felonis antecessoris ad hæredes non descendit, f. 130 b. quia oportet, quòd seysina sequatur dominū capitalem, ad quem jus revertitur. Si autem in vita patris moriatur, sive convictus sive non, statim incipit postnatus hæres esse propinquior patri communi, ac si frater antenatus feloniam non comisisset, quia in vita patris nihil juris ei descendit, & sic habendus erit quasi natus non fuisset, ut quibusdam videtur, sed aliis videtur contrà, qui dicunt, quòd cum talis in vita antecessoris feloniam fecerit, et de qua convict<sup>9</sup> est, non solùm forisfacit id quod tenet sibi & hæredibus suis, sed quicquid ei aliqua ratione accidere possit, à quocunq, antecessore, & non solùm hæredibus suis de carne sua exeuntibus, sed remotioribus fratrib<sup>9</sup> & aliis, quia per eum semper fieri debet narratio descensus, si de recto agatur, & hæc fuit ratio W. de Eborum & bona.

23. Sed quid dicetur de uxore hæreditatem habente, Diversa cum vir suus ppter feloniam aliquam, quam fecerit, opinio fuerit utlagatus, si uxor ppter hoc ejicienda sit ab Martini de hæreditate sua ppria, in quo casu diversæ fuerunt Pateshull et Stephani



less condemnation shall have followed. But what has been duly done before a crime has been committed, cannot be rendered void, as another law says, that, what has been duly transacted, cannot be annulled nor changed upon a delinquency supervening. But if a son or next heir has committed a felony in the life of the father, and has survived the father and has been convicted, when the absolute right has descended to him, whether he has had seysine of the inheritance or not, he forfeits for himself and his heirs the succession, and in such a manner, since the right cannot descend to the heirs, it reverts of necessity to the chief lord the feoffor, and although such a person has not the seysine, nevertheless the seysine of the felon ancestor does not pass to his heirs, because it is incumbent that the seysine should follow the chief lord, to whom the right reverts. But if he dies in the lifetime of his father, whether he has been convicted or not; forthwith the after-born heir commences to be the next heir to the common father, just as if the firstborn brother had not committed a felony, because during the lifetime of the father no right has devolved to him, and so he is to be regarded as if he had not been born, as it appears to some, but to others it seems otherwise, who say that since such a person has during the lifetime of his ancestor committed a felony, and of which he has been convicted, he not only forfeits that which he holds for himself and his heirs, but whatever by any reason might devolve to him, from any ancestor whatever, and not only to his heirs sprung from his own flesh, but to more remote brothers and others, because through him the line of descent must be traced, if a question of right is raised, and this was the reasoning of W. de Eborum, and was good.

But what shall be said concerning a wife having an inheritance, when her husband on account of some felony which he has committed has been outlawed, if the wife on that account is to be ejected from her own inheritance,

23.  
A diversity  
of opinion  
between  
Martin de  
Pateshull

de Segrave  
de hære-  
ditate mu-  
lieris.

opiniones, & secundum M. de Pateshull, quod propter factum viri sui ejici non deberet, nec in vita nec in morte viri sui. Stephanus verò de Segrave<sup>1</sup> sensit contrarium, quod foret ejicienda, & nunquam in vita viri sui restituenda, & hæc fortè potuit esse causa, quia hæreditas occasionem daret viro utlagato veniendi ad uxorem suam, & hoc esset contra pacem. M. dicebat, quod propter hoc ejici non debet ab hæreditate, nisi post utlagationem convicta esset de receptamto, vel fortè quod ab initio consentiens esset feloniam: si autem non, dicebat quod bene potuit viro suo exhibere, & ei necessaria invenire in alio regno. Sed esto, quod uxor petat hæreditatem suam vel partem, cum fuerit extra seysinam, postquam vir suus fuerit utlagatus, sine viro suo non debet audiri, licet fuerit sine culpa, nec assisam portare poterit de nova disseysina, si fortè post utlagationem viri sui fuerit ejecta. Item cum hæreditas sit communis tam viri quam uxoris, ut si terra data fuerit viro in maritagium cum uxore, & alter ipsorum feloniam fecerit, pro qua judicium sustinuerit utlagariæ, quæritur an ille qui sine culpa fuerit, amittere debeat totam terram illam, an ejus partem. Item cum res communis fuerit inter participes, & unus feloniam fecerit, & convictus fuerit, quæritur an plus forisfaciat quam partem suam? Videtur, quod non. Et in primo casu, licet in donatione maritagii mentio fiat de viro, tamen non erit ita viro terra data, quod eam forisfacere possit, quia tota remanebit uxori sicut hæreditas

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<sup>1</sup> Stephanus de Segrave was Lord Chief Justice of England. He died in 1241.

in which case there have been divers opinions, and according to Martin de Pateshull, that she ought not to be ejected on account of the act of her husband, neither during the life nor upon the death of her husband. But Stephen de Segrave thought otherwise, that she ought to be ejected and should never be restored during the lifetime of her husband, and this perchance may have been the cause, because the inheritance would afford an opportunity to the outlawed man of coming to his wife, and this would be against the peace. Martin was accustomed to say, that she ought not to be ejected on that account from her inheritance, unless she has been convicted after the outlawry of having harboured her husband, or perchance if she has been from the commencement a consenting party to the felony; but if not, he said that she could well supply to her husband and find for him necessities in another realm. But let it be that the wife claims her inheritance or a part of it, when she is out of seysine of it, after her husband has been outlawed, she ought not to be heard without her husband, although she may be without fault, nor can she bring an assise of novel disseysine, if by chance she has been ejected after the outlawry of her husband. Likewise when the inheritance shall have been in community between the husband and the wife, as if the land has been given to the man as a marriage portion with the wife, and one of them has committed felony, for which a judgment of outlawry has been passed, it is questioned whether the one who is without fault ought to lose the whole of the land or a part of it. Likewise when a thing has been in common between partners, and one has committed a felony and been convicted, it is questioned whether he should forfeit more than his part. It appears to be not so. And in the first case, although in the marriage-donation mention is made of the husband, nevertheless the land will not have been so given to the husband that he can forfeit it, because the whole of it will remain to

and Stephen de Segrave concerning the inheritance of a woman.

sua. Item si mulier aliqua, sicut mater cum filio, tenuerit in communi, & ubi dos nunquam fuerit partita nec assignata, si filius p feloniam fuerit condemnatus, quæritur si forisfacere possit dotem matris suæ: videtur quod non, sed habebit actionem versus eum, cujus eschaeta terra illa fuerit. Item quid dicetur de eo, qui, cum condemnatus fuerit, in seysina extiterit de jure alieno. Item si cum hodie fecerit disseysinam, cras fuerit condemnatus, videtur quod talis jus & hæreditatem aliorum forisfacere non potest, sed competit eis actio contra quoslibet possidentes, si voluerit,<sup>1</sup> per breve de ingressu. Item si quis ad vitam accipientis concesserit terram alicui ante condemnationem, tunc refert utrum hoc fecerit ante feloniam perpetratam vel post: si autem ante feloniam, non erit terra eschaeta ante mortem tenentis, cum nullus possit jus alienum forisfacere, si autem post feloniam, aliud erit. Item si ad vitam suam propriam concesserit condemnatus, cum vita expirat terminus, si autem ad firmam & ad terminum annorum concesserit quis terram alicui condemnato, erit terminus regis ut catallum, quia accipitur terminus ad similitudinem catallorum. Et notandum, quod non debet rex de jure habere annum & diem de aliquo quod non possit esse eschaeta dominorum, nec cum eis remanere, si de hoc constare possit. Item videndum quid dicendum sit de clerico, qui pro aliqua feloniam captus fuerit, & de eo petatur curia Christianitatis, & episcopus vel alius ordinarius petierit prisonam domini regis ad custodiendum eum, & talis frangat prisonam, & fugiat ad ecclesiam, extrahatur ab ecclesia, & reponatur in prisona à qua evasit,

f 131.

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<sup>1</sup> "voluerint," MS. Rawl., C. 160.

the wife just as her inheritance. Likewise if a certain woman, such as a mother, has held in common with her son, and where her dower has never been divided nor assigned to her, if the son has been condemned for felony, it is asked whether he causes the dower of his mother to be forfeited; it appears to be not so, but she will have an action against him, to whom the land has been escheated. Likewise what shall be said of him who, when he was condemned, has been in seysine of another person's right. Likewise if, when he has made a disseysine to-day, he shall be to-morrow condemned, it appears that such a person cannot cause the right and inheritance of others to be forfeited, but they are entitled to bring an action against those who have taken possession, if they wish, by a writ of entry. Likewise if a person has granted before his condemnation land to another person for the life of the acceptor, then it is of importance whether he has done this before the perpetration of the felony or after it. If indeed before the felony, the land will not be an escheat before the death of the tenant, for no one can cause another person's right to be forfeited; but if after the felony, it will be another thing. Likewise if the condemned person has granted it for his own life, the term expires with his life, but if any one has granted to one, who is condemned, land to farm and for a term of years, the term will be the king's like a chattel, for the term is accepted after the likeness of chattels. And it is to be noted that the king ought not to have of right a year and a day of anything which cannot become an escheat of the lords, nor remain with them, if this can be ascertained. Likewise it is to be seen what is to be said of a clerk, who has been captured for any felony, and the court of Christianity is applied to concerning him, and the bishop or other ordinary has petitioned the prison of the king to have the custody of him, and such a one breaks his prison and takes refuge in the church, and is dragged out of the church and replaced in the

f. 131.

nec etiam ecclesia ipsum tueri debet, nec etiam publicum latronem, quin extrahatur si ad pacem regis venire noluerit, sicut sunt prædones publici, vel hujusmodi, sicut latrones seysiti.

## CAP. XIV.

1.  
De inlagatione, qualiter utlagati post utlagariam ex causa mittuntur ad pacem.

Quòd quis ita fuerit utlagat<sup>9</sup> qualiscunq, & ex quacunq, causa, non erit ei tutum quòd compareat, antequam fuerit de gratia principis inlagatus. Rex enim poterit utlagatum de gratia sua inlegare, & recipere eum ad pacem suam, extra quam priùs positus fuit, & reponere eum in legem, ita quòd si utlagaria rite facta fuerit & secundùm legem terræ, & sive ex causa vera sive præsumptiva, pdonare ei poterit fugam & utlagariam. Si autem cōtra legem terræ, debet eam pñuntiare esse nullam, & quidā sic utlagati secundùm legem terræ faciliùs recipiuntur ad pacem, secundùm q̄ ibi subfuerit causa vera vel nulla, vel minùs sufficiens: ut si ille, qui interfici debuit, producat<sup>r</sup> vivus & sanus, si autem factum tale quod non sit crimosum, eodem modo, vel si factum contingat per infortunium. Vix autem aut nunquam admittuntur, si factum fuerit criminale & feloniam contineat; tales quidem ad pacem recipi non deberent, ne ex facilitate veniæ aliis tribuatur materia sive audacia delinquēdi. Et qualitercunq, inlagetur, ita debet inlagari, quòd omnibus respondeat qui versus eum loqui voluerint, & fiant ei literæ domini regis patentes & testificantes, quòd pacem suam ei dederit in hac forma.

2.  
Breve,  
quod do-

Rex &c. omnibus ballivis & fidelibus suis præsentem literas inspecturis salutem. Sciatis nos pdonasse A.

prison from which he has escaped, the church ought not to protect him any more than a public robber, who is dragged out if he will not come to the king's peace, such as are public plunderers, or such like, such as robbers who are seysed.

## CHAPTER XIV.

When a person has been so outlawed in whatever way,<sup>1.</sup> or for whatever cause, it will not be safe for him to <sup>Of inlawry, in what way out-lawed per- sons after their out-lawry for cause shown are admitted to the king's peace.</sup> appear, before he has been inlawed by the grace of the king. For the king may inlaw an outlaw of his grace, and receive him into his peace, out of which he was previously displaced, and replace him within the law, so that if the outlawry has been duly made and according to the law of the land, and whether from a true cause or a presumptive cause, may pardon him his flight and outlawry. But if it be against the law of the land, he ought to pronounce it null, and some persons so outlawed according to the law of the land are more easily received into peace, according as there has subsisted a true cause or none, or an insufficient cause; as if he who ought to have been killed, is produced alive and unharmed, or if the act be such that it is not criminal, in the same manner, or if the act happened from misadventure. But they are rarely or never admitted, if the act has been criminal and it contains a felony; such persons ought not to be received into the peace, lest from the facility of the pardon the matter or the boldness of crime be communicated to others. And in whatever way he may be inlawed, he ought to be so inlawed, that he may reply to all who wish to speak against him, and let there be made out letters patent of the lord the king testifying that he has granted him his peace in this form. f. 131 b.

The king &c. to all bailiffs and his faithful subjects,<sup>2.</sup> who may inspect these letters sends greeting. Know <sup>A writ that the king</sup>

minus rex  
perdonat  
fugam et  
utlagariam  
omnibus  
ballivis  
dirigendum  
a tempore  
suo.

fugam quam fecit, & utlagariam in eum pmulgatam pro recto tali vel tali, ut pro morte, mahemio, roberia & hujusmodi, unde talis eum appellat, & volumus & præcipimus quòd idem A. firmam pacem nostram inde habeat, ita tamen quòd stet recto, si quis versus eum loqui voluerit, & in huj<sup>9</sup> rei testimonium ei fieri fecim<sup>9</sup> istas literas nostras patentes.

3. Aliud,  
quod rex  
perdonat  
(quantum  
ad ipsum  
pertinet)  
utlagariam  
a tempore  
patris sui.

Sciatis nos pdonasse, quantum ad nos ptinet, A. fugam quam fecit p morte B. interfecti tempore domini regis I. patris nostri, unde idem A. rectatus fuit, et ideò volumus & præcipimus, quòd idem A. firmam pacem nostrā inde habeat, ita tamen quòd pacem faciat cum parentibus ipsius B. et stet recto &c. ut suprā. Literas autem istas secum deferat inlagatus quocunq, ierit, & in promptu habeat, ne quis, ignorans ipsum gratiam regis adeptum fuisse, tanquam utlagatum interficiat, quod quidem recenter post gratiam adeptam posset ignorare, si inlagatus ad manum & in promptu literas regis non haberet. Sunt etiam aliæ formæ literarum utlagationis, sed magistrales secundum qualitatem facti, ut si quis de uno facto appellatus fuerit à duobus, & in uno comitatu se defenderit secundum legem terræ, vel se in prisonam posuerit, & in alio comitatū fuerit utlagatus. Forma verò brevis talis est.

4. Item, quod  
rex per-  
donat utla-  
gariam,  
quia tem-  
pore, quo  
appellam  
factum fuit,

Rex vicec. tali salutem. Scias quòd cūm A. in comitatu nostro Eborum appellaret B. de chartis, armis & equis C. domini ipsius A. & eidem C. robbatis in custodia ipsius A. et idem C. eodem tempore, quo appellum illud fuit in eodem comitatū Eborum, appellaret eundem B. de eadem roberia in comitatu Essex,



that we have pardoned A. his flight, which he made, and the outlawry proclaimed against him for such a trial or such, as for a death, mayhem, robbery and such like, respecting which so-and-so charges him, and we will and enjoin that the same A. have henceforward our peace firm, provided however that he stands his trial, if any one wishes to speak against him, and in testimony of this thing we have caused these our letters to be made patent.

Know ye, that we have pardoned as far as pertains to us to A. his flight which he made on account of the death of B. slain in the time of our father, whereof the same A. was cited into court, and accordingly we will and enjoin, that the same A. have our firm peace on that matter, so that he makes peace with the parents of B. himself and stands his trial, &c. as above. And let the inlawed person carry with him those letters wherever he may go, and have them ready, lest any person, being ignorant that he has obtained the king's grace, should slay him as an outlawed person, as he might be ignorant of the fact recently after the grace has been obtained, if the inlawed person had not the king's letters at hand and ready. There are also other forms of letters of outlawry, but magisterial according to the quality of the act, as if any one should be charged by two persons of one and the same act, and has defended himself in one county court according to the law of the land, or has surrendered himself to prison, and has been outlawed in another county court. But the form of the writ is as follows.

The king to such a viscount greeting. Know thou, that since A. in our county court of York has charged B. with having robbed C. of the charters, arms, and horses of C. the lord of A. himself, whilst in the keeping of A. and the said C. at the same time, when that charge was made in the said county court of York, has charged the said B. with the same robbery in the county court of Essex, and

pardons the flight and outlawry to be directed to all bailiffs from his own time.

3. Another writ that the king pardons, as far as pertains to him an outlawry from the time of his father.

4. Likewise, that the king pardons the outlawry, because at the time, at which the charge was

ipse appel-  
latus in alio  
comitatu  
appellatus  
fuit de  
eodem  
roberia.

& appellum illud inter prædictos A. & B. per præcep-  
tum nostrum positum esset coram justitiariis nostris  
apud W. audito in curia nostra appello ipsius A. &  
audita responsione ipsius B. consideratum fuit in ea-  
dem curia nostra, quòd appellum illud nullum fuit, &  
quòd idem B. inde quietus recederet, et unde ut audi-  
vimus, cùm idem B. appellatus esset de eodem facto per  
ipsum C. in comitatu Essex ad sectam & ad appellum  
ipsius C. fuit idem B. utlagatus, & publicè pro utla-  
gato clamatus in eodem comitatu Essex, et quoniam  
error præjudicare non debet veritati, & prædicta utla-  
garia in prædicto comitatu Essex promulgata ex igno-  
rantia processit, nec dici poterit contumax, qui in uno  
coñ se legitime defenderit, licet in alio comitat<sup>9</sup> de  
eodem facto fuerit appellatus & utlagatus ex ignoran-  
tia & per errorem, de consilio magnatum nostrorum,  
utlagariam illam nullam esse pronuntiamus, & illam  
eidem B. si qua esset, perdonavimus. Et ideo volu-  
mus & præcipimus, quòd idem B. firmam pacem nos-  
tram inde habeat imperpetuum, & in hujus rei testi-  
monium, &c.

f. 132.

5.  
Si quis  
falso coram  
justitiariis  
fuerit in-  
dictatus, et  
postea se  
reddiderit  
prisonæ  
domini  
regis, et  
remitterit  
rex utla-  
gariam.

Rex vicecomiti salutem. Ostensum est nobis ex  
parte A. quòd cùm peregrè pfectus esset, tempore quo  
justitiiarii nostri ultimò itineraverunt in partibus tuis,  
quidam ex vicinis ipsius A. terram suam cupientes  
(cùm inde culpabilis non sit) malitiosè fecerūt eum  
indictari de latrocinio, et quòd inde eum malè credi-  
derunt, & ita quòd à præfatis justitiariis nostris præ-  
ceptum fuit, quòd nisi veniret ad standum recto de  
prædicto indictamto, exigeretur de coñ in comitatū,  
& secundum regni nostri consuetudinem utlagaretur.  
Quod cùm idem A. à peregrinatione reversus audivis-  
set, de innocentia & fidelitate sua confisus, reddidit se  
prisonæ nostræ apud talem locum, antequam esset in  
comitatu tuo utlagat<sup>9</sup>. Comitatus verò tuus hoc igno-

that charge between the aforesaid A. and B. by our precept was brought before our justices at W., the charge of A. having been heard in our court, and the reply of B. himself, it was determined in the said court that the charge was null, and that the said B. should depart unmolested, and subsequently as we have heard, when the said B. has been charged with the same act by C. in the county court of Essex at the suit and upon the charge of C. himself, the said B. has been outlawed, and publicly proclaimed an outlaw in the said county court of Essex, and since an error should not be prejudicial to the truth, and the aforesaid outlawry proclaimed in the aforesaid county of Essex has proceeded upon ignorance, nor can a person be declared in contempt, who has defended himself according to law in one county court, although he has been charged with the same act in another county court and outlawed from ignorance and by error, with the advice of our magnates we pronounce that outlawry to be null, and we have pardoned it, if it were ever in force, to the said B. And therefore we will and enjoin that the said B. have our peace assured to him henceforth for ever, and in testimony thereof, &c.

The king to the viscount greeting. It has been shown to us on the part of A. that when he had gone abroad, at a time when our justices last travelled in your parts, certain of the neighbours of A. himself coveting his land (when he was not thereof culpable) maliciously caused him to be indicted for robbery, and that he was in evil repute thereby, and so that our justices made an order, that unless he came to stand his trial on the aforesaid indictment, he should be required to appear from court day to court day, and according to the custom of our realm be outlawed, which when A. having returned from his foreign journey had heard, having confidence in his own innocence and fealty, he surrendered himself to our prison in such a place, before he was outlawed in your county court. But your county court

made, the party charged was charged in another county for the same robbery.

f. 132.  
5.  
If any one has been falsely indicted before the justiciaries and has afterwards surrendered himself to the prison of the lord the king, and the king remits to him his outlawry.

rans (ut dicii) interrogationem prosequens inceptā versus ipsum A. eundem, dum fuit in priona, utlagavit. Nos verò simplicitatem prædicti A. attendentes & ignorantiam com, utlagariam in eum hoc modo promulgatam ei perdonavimus, ita quòd sufficientem inveniat securitatem, ad standum recto, si quis inde versus eum loqui voluerit. Et ideò tibi præcipimus, quòd acceptis ab eo modò prædicto salvis & securis plegiis, ipsum à priona facias deliberari, & clamari facias per totum comitatū tuum, quòd firmam pacem nostram habeat: et quòd occasione prædictæ utlagariæ nullus ei molestiam inferat seu gravamen. Teste, &c.

6.  
Si ille, qui  
interfici  
debit,  
sanus et  
vivid red-  
ierit.

Item si cuiquam meticoloso imponatur, quòd hominem interfecerit, vel indictatus fuerit & fugerit, et per sectam alicujus utlagatus, et ille qui interfici debuit postmodum sanus & vivid appareat: dominus rex de gratia sua remittit ei utlagariam p hoc breve.

7.  
Breve de  
eo, qui  
interfici  
debit, si  
sanus et  
vivid re-  
vertatur.

Rex vicec. salutem. Scias, quòd justitiiarii nostri, qui ultimò itineraverunt in comitatu tuo, recordantur, quòd cum A. in curia nostra coram eisdem justitiariis nostris appellaret B. & quosdam alios de morte C. fratris sui: idem B. homo meticolosus & timens sibi, subtraxit se, ita quòd coram eisdem justitiariis nostris non stetit recto de appello illo, ppter quod à juratoribus & villatis de morte illa suspectus habebatur & malè creditus fuit inde, maximè ppter fugam, et ita quòd ad præceptum eorundem justitiariorum nostrorum interrogatus fuit de comitatu in comitatū, & ita quòd secundum legem terræ utlagat<sup>9</sup> est. Verumtamen, quoniam idem B. qui interfici debuit inventus est vivid & sanus, nos præsumptionem habitam ppter fugam

being ignorant thereof (as is said), pursuing the trial then begun against the said A., outlawed him whilst he was in prison. We, however, taking into account the single-mindedness of the said A. and the ignorance of the county court, have pardoned him the outlawry proclaimed against him, on condition that he finds sufficient surety to stand his trial, if any person wishes to proceed against him. And accordingly we enjoin you, that having taken from him in the manner aforesaid safe and secure pledges, you cause him to be delivered from prison, and to be proclaimed under our protection through the whole county that he has our peace secured to him; and that no one, on account of the aforesaid outlawry cause him any trouble or grievance. Witness, &c.

Likewise if it be charged against any timid person, that he has slain a man, or he has been indicted and has taken flight, and upon the suit of any person he has been outlawed, and he who ought to have been slain, afterwards makes his appearance in good health and alive, the lord the king shall remit the outlawry by writ of this tenor.

6.  
If he, who ought to have been slain, returns safe and alive.

The king to the viscount greeting. Know, that our justices, who last travelled in your county, remember that, when A. in our court before our said justices accused B. and certain others of the death of C. his brother; the said B. being a nervous man and fearing for himself, withdrew himself, so that he did not stand his trial before the said justices concerning that accusation, wherefore he was regarded as suspected by the jurors and townsmen concerning that death, and was in bad repute therefrom, chiefly on account of his flight, and so that by the precept of our said justices he was required to appear from court day to court day, and so that he was outlawed according to the law of the land. Nevertheless since the said B., who was said to have been slain, has been found alive and unharmed, we being un-

7.  
A writ concerning him, who ought to have been slain, if he returns safe and alive.

veritati præferri nolentes, et quia jam manifestum est, quòd nulla subfuit vera causa utlagationis, fugam illam eidem B. remisimus, & utlagationem perdonavimus, quòd veniat ad pacem nostram, de gratia nostra speciali. Et ideò tibi præcipimus, quòd in pleno comitatu tuo, ubi idem B. fuit utlagatus, produci facias ipsum C. qui dicebatur occisus, et ab omnibus videri, & tunc demū ipsum B. inlagari facias & ad pacem nostram recipi, et etiam publicè clamari, quòd ipsum ad gratiam nostram recepimus, & quòd ei dedimus firmam pacem nostram. Teste, &c.

8.  
De inlagatione, et ad quæ restituatur inlagatus.

Cùm quis igitur ita fuerit de gratia principis inlagatus, ad quæ restituatur? Et ad hoc distinguendum est, utrum utlagaria ritè & secundum legem terræ facta sit, sive subsit causa vera sive præsumptiva, & sic valida & justa, vel si facta fuerit cōtra legem terræ, & sic invalida, & injusta & nulla.

f. 132 b.  
9.  
Quod iudicanda erit causa primo ante inlagationem, per quam fuit utlagatus, ut facilius admittatur ad pacem secundum causam utlagationis.

Item si subfuit causa, quæ & qualiter illa fuerit, & ubi de facto præcedente denotari possit feloniam perpetrata, & in qua volūtate & assultu præmeditato, ut si factum evenierit per infortunium sine feloniam, aut cū quis licitum vellet, aliud accidit per infortunium illicitum, quòd non vellet, vel si quid accidit ex necessitate: ut si quis hominem se defendendo interfecerit, cū aliàs periculum evitare non posset, vel cū omnino nulla subfuit causa, sicut de meticuloso dicitur, & ubi ille qui interfici debuit viv⁹ exhibetur. In primo verò casu, ubi feloniam denotari poterit, nūquā deberet talis admitti ad gratiā, vel non nisi cum

willing that the presumption arising from that flight should be preferred to the truth, and because it is now manifest that there was no true cause for the outlawry, have remitted to B. his flight, and have pardoned his outlawry, that he may come under our protection, of our special grace. And accordingly we enjoin you, that in your full county court, where the said B. was outlawed, you cause C. himself to be produced, who was said to have been slain, and to be seen by all persons, and thereupon you cause B. himself to be inlawed, and received under our protection, and likewise to be publicly proclaimed, that we have received him into our favour, and that we have granted him our sure protection. Witness, &c.

When therefore a person has been by the grace of the prince inlawed, to what things is he restored? And on this question a distinction has to be made, whether the outlawry has been made duly and according to the law of the land, and whether there has been subsisting a true or a presumptive cause, or if it has been made contrary to the law of the land, and therefore it is unjust and null.

Likewise if there has been a substantive cause, what it is and in what manner it has happened, and where from a preceding fact the perpetration of a felony may be denoted, and in which with intention and a premeditated assault, as if an act has happened from misadventure without felony, or when a person intended a lawful thing, another thing happened by an unlawful misadventure, which he did not intend, or if anything has happened from necessity; as if a person has slain a man in defending himself, when otherwise he could not escape danger, or when there has been no subsisting cause, as is said in the case of a timid person, and where he who ought to have been slain is produced alive. But in the first case where the felony may be denoted, such a person ought never to be admitted to grace, or not so, except with great

8.  
Concerning inlawry, and to what things the person inlawed is restored.

f. 132 b.  
9.  
That the cause, for which a person has been outlawed, must be judged of first, before the inlawry, that he may be admitted more easily into the peace of the king according to the cause of the outlawry.

magna difficultate, quia ex tali inlagatione & tali gratia de facili obtenta, ex tali veniæ facilitate, non solùm inlagatis, verùm etiam aliis in hoc confidentibus, datur materia delinquendi.

10.  
Si nulla  
causa, sed  
infortu-  
nium sine  
felonia.

Si autem factum evenerit p infortuniū sine felonia, ut si quis se defenderit licetè, recipi debet ad gratiā & ad pacem sine difficultate, gratia tamen principis comitante.

11.  
Si nulla  
omnino  
causa.

Item in casu ubi nulla subest causa, licet tamen utlagaria sit justa & ritè facta, recipi debet quis ad pacem de gratia & sine difficultate, & aliquantulū de jure, si nulla causa sit, sed infortuniū sine felonia. Cùm autem utlagaria ipso jure nulla, eò quòd cōtra legem terræ & consuetudinē regni pmulgata, sive subfuerit causa vera vel psumptiva, sive omnino nulla, secundùm q ppendi poterit ex præmissis, talis de jure recipi debet ad gratiam, & de jure ad omnia restitui, ac si non esset ab initio utlagatus. Cùm appellatus fugerit, & appellans ritè prosecutus fuerit usq, ad utlagariam, præsumitur vehementer ppter sectam & ppter fugam, quòd appellatus culpabilis sit, & huic psumptioni standum erit semper, quòd appellatus non potest restitui nisi ad pacem tātū, & quòd omnia amittit, donec probetur contrarium, s. quòd factum nullum sit, quod benè fieri poterit, ut si ille, qui interfici debuit, post utlagariam pducatur vivus, & quo casu, utlagatus restituatur ad omnia, quia factū nullum, & unde talis vera pbatio vincit psumptionem. Si autem utlagatus antè moriatur, forisfacit omnia suis hæredib<sup>9</sup> nisi de cōsilio & gratia aliud fiat.



difficulty, for from such an inlawry and such a grace easily obtained, from such a facility of pardon matter for delinquency is supplied, not only to the persons inlawed, but also to others having confidence in the precedent.

But if the act has been done by misadventure without felony, as if a person has defended himself lawfully, he ought to be received into grace and into the king's peace without difficulty, the grace of the prince, however, accompanying him.

10.  
If there be  
no cause,  
but mis-  
adventure  
without  
felony.

Likewise in the case, where there is no subsisting cause, although the outlawry be just and rightly made, a person ought to be received into the peace of the king of grace and without difficulty, and in some degree of right, if there be no cause, but misadventure without felony. But when the outlawry is null in law, because it has been proclaimed contrary to the law of the land and the custom of the realm, whether there has been a subsisting cause true or presumptive, or altogether none at all, according as may be gathered from the premises, such a person ought of right to be received into grace, and of right to be restored to everything, as if he had not been originally outlawed. Where the party accused has taken flight, and the accuser has duly prosecuted him to outlawry, there is a vehement presumption on account of the suit and on account of the flight, that the person accused is guilty, and by this presumption we must always stand, that the accused person cannot be restored except only to the king's peace, and that he loses everything, until the contrary is proved, namely, that there has been no act, which may well be done, as if he who ought to have been killed, is produced after the outlawry alive, and in which case the outlawed person may be restored to everything, because there has been no act, and in which case such a true proof overcomes the presumption. But if the outlawed person dies beforehand, he causes his heirs to forfeit everything, unless it be otherwise done of counsel and of grace.

11.  
If there  
has been  
no cause  
at all.

12.  
Non resti-  
tuitur quis,  
nisi tan-  
tum ad  
pacem.

In omnib<sup>9</sup> verò casib<sup>9</sup> prædictis, qualiscunq<sup>9</sup> fuerit causa, cùm utlagatio ritè facta sit & secundùm legem terræ, non restituitur quis nisi tantùm ad pacem, quòd ire possit & redire & de novo contrahere, non enim poterit id quòd p utlagariā fuit dissolutum, p inlagariam conjungi sine nova voluntate eorum qui priùs contraxerunt. Non enim poterit rex gratiā facere, cum injuria & damno aliorum. Poterit quidem dare q suum est, hoc est pacem suam, quam utlagat<sup>9</sup> amisit ppter fugā & suam contumaciam, q autem alienum est dare non potest p suam gratiā. Item justè utlagatus & ritè non restituitur nisi tantùm ad pacem, quòd ire possit & redire & pacē habere, & ad actiones restitui nō potest nec alia,<sup>1</sup> quia est sicut infans modo genit<sup>9</sup>, & homo quasi modo genit<sup>9</sup>. Item non potest inlagaria restituere ad actiones & obligationes p̄habitas, nec ad homagiū nec fidelitates, nec ad sacraīta nec ad alia p utlagariā dissoluta, cōtra voluntatē eorū de quorum voluntate priùs fuerunt conjuncta & firmata, & idèd nec ad hæreditates nec ad teneīta in præjudiciū dominorū, & sic ad ea quæ juris sunt restitui non possunt. Ex obligationib<sup>9</sup> verò præcedentib<sup>9</sup> nullus eis tenetur, sed ipsi ōnibus ne sint melioris cōditionis ppter utlagā, cū deteriores esse debent.

13.  
Quid felo  
forisfaciat  
sive utla-  
garius.

Quid felo forisfaciat & quibus, satis dict' est suprā, sed cum restitui pcuret, videndū ubi restituendus erit de jure, & ubi de grā, & ubi nec de jure nec de grā, nisi hoc fiat de voluntate regis. Itē cum de jure vel de gratia fuerit restitut<sup>9</sup> post utlagariā, ad quæ restituitur & ad quæ non. Cum autem quis ppter suspi-

<sup>1</sup> "nec ad alia." MS. Rawl. C. 160. | differs altogether from the printed  
The text of MS. Rawl. C. 159 | text of 1569.

But in all the aforesaid cases, whatever may have been the cause, when the outlawry has been made duly and according to the law of the land, a person is not restored except to the king's peace alone, that he may go and return and contract anew, for that which has been dissolved by the outlawry cannot be joined anew by the inlawry without a new intention on the part of those who have contracted. For the king cannot grant a pardon with injury or damage to others. He may give what is his own, that is his protection, which the outlawed person has lost through his flight and his contumacy, but that which is another's he cannot give by his own grace. Likewise a person justly and duly outlawed is not restored to anything except to the king's peace, that he may go and return and have protection, but he cannot be restored to his rights of action and other things, for he is like a new-born infant and a man as it were lately born. Likewise inlawry does not restore a person to his previous actions and obligations, nor to his homage nor fealties, nor to his oaths, nor to other things dissolved by his outlawry, against the will of those by whose will they were previously united and confirmed, and accordingly neither to his inheritances nor to his tenements to the prejudice of the lords, and so they cannot be restored to those things to which they had only a right. But no one is bound to them by preceding obligations, but they are bound to all others, that they may not be in a better condition on account of their outlawry, since they ought to be in a worse condition.

What a felon forfeits and to whom has been sufficiently discussed above, but when he procures himself to be restored, it is to be seen where he is to be restored of right, and where of grace, and where neither of right nor of grace, unless it be by the will of the king. Likewise when he shall have been restored of right or of grace, after his outlawry, to what he is restored and to what not. But when any person on account of suspicion and

12.  
A person  
is not re-  
stored to  
anything  
but the  
king's  
peace.

f. 133.

13.  
What a  
felon for-  
feits, or an  
outlaw.

tionem & malum rectū se subtraxerit, statim amittit catalla, si coram justitiarū vocatus non comparuerit, ppter fugam, licet statim ante utlagariā cōparuerit. Poterit quis utlagari ppter fugam, sive ibi subfuerit vera causa vel psumptiva. Præsumptiva dico, ppter fugam tantū, licet ibi non sit vera causa. Vera dico, si quis interfectus sit p feloniam vel p infortunium. Præsumptiva, cū nulla prædictorum subsit, vel cū ipse qui occidi debuit vivus appareat. In omnibus autem casibus prædictis sive subsit vera causa sive præsumptiva, si quis fuerit restitutus post utlagariam ritè factam, & secundū legem terræ omnibus ritè concurrentibus, nec ad catalla habenda restituitur nec ad hæreditatē, ad catalla videlicet ppter fugam, nec ad hæreditatē propter utlagariam ritè factam, nisi tantū ad pacem, ut omnib<sup>9</sup> respōdeat qui adversus eum loqui voluerint, quia statim cū convictus fuerit p utlagariam, incipit jus merum reverti ad dominum capitalem, quia cum felone ulterius remanere non possit, & talis restituitur ad gratiā sine pjudicio alterius alicujus. Itē sunt quidā, qui restitui debent de jure, ad pacem in ōni casu, & ad omnia licet fuerint utlagati, videlicet ubi utlagaria nulla ipso jure, ut si facta fuerit contra legem terræ & regni consuetudē, & aliter quā de jure fieri deberet, vel alibi, ut si extra cōm, vel in Londoniā extra hustingum: & aliter, q quidem poterit esse multis modis, ut si ante quintū cōm. Item si in cōm, tamen ad nullius sectam, videlicet regis, vel parentis, vel amici, & si secta ibi fuerit, tamen ille qui utlagat<sup>9</sup> est, fuit infra ætatem. Itē cū ille qui utlagatus est, venire non potuit, quia

bad character has withdrawn himself, he forthwith loses his chattels, if when summoned before the justices he has not appeared, on account of his flight, although he may have appeared immediately before his outlawry. A person may be outlawed on account of his flight, whether there has been subsisting a true cause or a presumptive cause. I mean by a presumptive cause, on account of his flight alone, although there be not in such case any true cause. I mean by a true cause, if anybody has been slain feloniously or by misadventure. Presumptive, when none of the things aforesaid exist, or when he who ought to have been slain appears alive. But in all the above cases whether there be subsisting a true cause or a presumptive cause, if anybody has been restored after an outlawry made duly and according to the law of the land with all due solemnities concurring, he is neither to be restored to his chattels, nor to his inheritance; [not] to the chattels on account of his flight, nor to the inheritance on account of his outlawry having been duly made, except to the king's peace, that he [may] reply to all who would speak against him, because as soon as he has been convicted by outlawry, the absolute right reverts to the chief lord, since it cannot remain any longer with a felon, and such a person is restored to grace without prejudice to any other person. Likewise there are some, who ought to be restored of right to the king's peace in every case and to every thing, although they have been outlawed, for instance, where the outlawry is of right null, as if it has been made contrary to the law of the land and the custom of the realm, and otherwise than it ought to have been of right, or elsewhere, as if beyond the county, or in London outside the husting: and otherwise, which may have happened in various ways, as before the fifth county court day. Likewise in the county court, yet at the suit of nobody, as for instance the king, or a relative, or a friend, or if there has been a suit, yet, he who has been outlawed has been under age. Likewise when he, who has been outlawed, could not come, because

ante utlagatū se posuit in prisiona pro facto illo vel pro alio. Item cū de facto illo appellatus fuit & interrogatus, p facto uno in uno cōm & ab uno, se defendit in alio comit versus aliū appellanē de eodem facto, & multis aliis modis. Itē inlagari debet quis sine juris injuria, licet non ad hæreditatem nec ad catalla, ubi nulla subfuit causa utlagationis omnino, nisi q fuit meticulosus, & sic nullam rem timens, subtraxit se, vel quia ipse qui interfici debuit jam apparet vivus, & hujusmodi: & in hoc casu denotatur jus & non gratia. Item restitui potest de gratia, & non de jure ad pacem tantū, & non ad alia, cū ritē fuerit utlagatus, sicut est ille qui hominem interficit per infortuniū, & non ex mala voluntate, quia voluntas & propositū distinguunt maleficia. Si quis autem per feloniam & in assultu præmeditato alium interfecerit, talis nunquam de jure restitui deberet nec de gratia, quia cum talibus nulla gratia facienda est, ne talis gratia aliis præbeat audaciam consimilia perpetrandi: quia facilitas veniæ &c. Facit tamen rex aliquando gratiam talibus, sed contra justitiā, cum ad sectā suam fuerint utlagati, sed tamen ut omnib<sup>9</sup> respondeant. Item esto quod filius antenatus utlagatus sit, & in vita

f. 133 b. patris vel alterius antecessoris fuerit inlagatus & sic ad pacem domini regis restitutus, expectaverit mortem antecessoris sui, nec iste ad hæreditatem admittetur. Item cū inlagatus fuerit tali modo ut & omnibus respondeat, & se fortē defendat per corpus vel per patriam, nec adhuc admittetur licet sic purgaverit innocentiam suam. Item cū interrogatus esset & utlagatus, nunquam exiit à seysina, sed semper fuit in

before he was outlawed, he had surrendered himself to prison for that act or for another. Likewise when he has been charged and prosecuted for that act, for one act in one county court and by one person, he defends himself in another county court against another person accusing him for the same act, and in many other modes. Likewise a person ought to be inlawed without any injury to his right, although not to his inheritance nor to his chattels, where there has been no subsisting cause at all of his outlawry, except that he was a timid person, and so without fearing anything, withdrew himself, or because he who ought to have been slain, now appears alive, and such like, and in this case right and not grace is shown. Likewise he may be restored of grace and not of right to the king's peace alone, and not to other things, when he has been duly outlawed, as for instance he who has killed a man from misadventure, and not from evil intention, because intention and purpose distinguish misdemeanors. If any one however has slain another feloniously and by a premeditated assault, such a person ought never to be restored of right, nor of grace, because no grace is to be shown to such persons, lest such grace afford to others the audacity of perpetrating similar acts, because facility of pardon &c. The king however sometimes shows grace to such persons, but contrary to justice, when they have been outlawed at his suit, but on the condition that they make answer to all persons. Likewise let it be that a son already born is outlawed, and during the lifetime of his father or another ancestor has been inlawed, and so having been restored to the peace of the lord the king, has awaited the death of his ancestor, he shall not be admitted to the inheritance. Likewise when he has been inlawed on condition that he shall make answer to all persons, and by chance he defends himself by his body and by the country, he shall nevertheless not be admitted although he has thus purged his innocence. Likewise when he has been interrogated and outlawed, and he has never gone out of seysine, but

f. 133 b.

continua seysina per uxorem, & liberos, & familiam suam, adhuc hæreditatem retinere non potest, nisi dominus suus capitalis hoc voluerit & hoc propter utlagariam ritè factam. Inlagati verò dici poterunt quasi modo geniti infantes, & novi homines quasi de novo creati, quia in personis eorum post utlagariam ritè factam nulla præterita subsistunt, sed post inlagariam tantum præsentia & futura succedunt & ad ea quæ pacis sunt restituuntur, ut redeant ad regnum & exeant cum voluerint, vel remaneant si voluerint & sibi provideant in futuro de acquisitionibus rerum (sicut prius) negotiando, contrahendo, emendo, vel vendendo, cum firma pace domini regis.

14. Item restituuntur legi in criminalibus maximè, & ipsi aliis respondeant & stent recto, si quis versus eos loqui voluerit, sed alii ipsis non respondebunt. In civilibus verò ipsi aliis, sed non alii ipsis, quia per utlagariam dissolvuntur quoad ipsas obligationes, & perinde extinguuntur actiones, quæ resuscitari non poterunt. Respondere autem tenentur, si quis versus eos loqui voluerit, & ibi respondere tenentur omnibus, sed habent exceptiones suas versus omnes, præterquam illos, qui ritè & secundum legem terræ versus eos sectam fecerint per quam utlagati fuerint, & unde si versus alios se defenderint per exceptionem.

15. Rex remittit eis suam sectam, quod quidem facere possit sine præjudicio aliorum. Si autem, cum quis fuerit inlagatus, & sit aliquis qui versus eum loquatur, qui sectam suam bene fecerit & sufficienter versus eum, per quem utlagatus fuit, & petat iudicium de hoc, quod per sectam suam utlagatus est, si debeat eum



has been in continued seysine by his wife and his children and his family, still he cannot retain the inheritance, unless his chief lord has been willing and this on account of the outlawry duly made. For inlawed persons may be described as a kind of new born infants, and new men created as it were afresh, because nothing past subsists in their persons after outlawry duly made, but after inlawry only the present and the future succeed, and they are restored to the benefits of the king's peace, that they may return in the realm and go forth when they please, or remain if they please, and provide for themselves in future by the acquisition of things [as before] by trading, contracting, buying and selling, with the firm peace of the lord the king.

Likewise they are restored to the law in criminal matters chiefly, and they may themselves answer to others and stand their trial, if any person wishes to speak against them, but others shall not answer to them. But in civil matters they may answer to others, but not others to them, because by outlawry as regards them all obligations and actions are equally extinguished, which cannot be resuscitated. But they are bound to answer, if any person wishes to speak against them, and there they are bound to answer to all, but they have their exceptions against all, except those, who duly and according to the law of the land brought the suit against them through which they were outlawed, and hence if they defend themselves against others, [it is] by an exception.

14.  
Likewise they are restored to the law chiefly in criminal matters, that they may answer to others, but not others to them, and in civil matters themselves to others.

The king remits to them his suit, which he may do without prejudice to others. But if, when a person has been inlawed, there is any one who will speak against him, who has conducted his suit well and sufficiently against him, through whom he has been outlawed, and he seeks judgment against him, as he has been outlawed through his suit, if he ought to convict him again, when

15.  
The king remits to them his suit without prejudice to others.

iterum convincere, cū semel eum convicerit per sectam suam, videtur quòd, si quis utlagatus fuerit per sectam alicujus, non propter hoc convincitur de facto & feloniam, nisi tantū de contemptu & inobedientia, & hac ratione, quia poterit quis utlagari per sectam alicujus propter fugam, ut prædictum est, licet nulla subfuit causa, nec factum, nec feloniam.

16. Oportet igitur quòd appellans, si sectam benè fecit, de novo loquatur versus eum, & quo casu, appellatus propter sectam bene factam ab appellante amisit suas exceptiones, amisit etiam electionem defendendi se per corpus suum, vel ponendi se super patriam, cū appellans eum convicerit semel per appellum & per sectam, & idè quia appellatus hoc totam amisit propter fugam & utlagariam, oportet quòd per patriam se defendat, quòd si per patriam se defendere non possit, quòd doceat causam esse nullam per exhibitionem ejus qui interfici debuit, alioquin judicium sustinebit, vel si patriam recusaverit, quasi pro convicto habetur, ita quòd in patria remanere non poterit, & si rex eum in patria sustineret, hoc esset ad injuriam appellantis. Si autem non sit aliquis qui ab initio benè secutus fuerit, nec aliquis qui appellum habere possit, tunc poterit utlagatus in patriā remanere ad pacē domini regis.

17. Itē esto q quis plures habuerit filios, & antenatus feloniam fecerit in vita patris, & utlagat<sup>9</sup> in vita p̄ris, mortuo patre videndū est ad quem jus & hæreditas descēdere debeat. Et videtur q non filio utlagato, ex quo p utlagariam forisfecit jus succedēdi, & non solūm

Quod oportebit, quod versus ipsum loquatur per verba appellii.

f. 134.

Item, si antenatus filius ex pluribus feloniam fecerit in vita

he has already convicted him by his suit, it seems, that, if any person has been outlawed through any person's suit, he is not on that account convicted of the fact and the felony, but only for contempt and disobedience, and for this reason, that any person may be outlawed through the suit of any person on account of flight, as aforesaid, although there be no subsisting cause, nor fact, nor felony.

It is incumbent therefore that the accuser, if he has well conducted his suit, proceed anew against him, and in which case the party accused on account of the suit of the accuser having been well conducted has lost all his exceptions, he has lost also his election to defend himself by his body, or of putting himself upon the country, since the accuser has already convicted him by his charge and by his suit, and accordingly because the party accused has lost all this through his flight and outlawry, it is incumbent that he defend himself by the country, but if he cannot defend himself by the country, that he show that the cause is null by exhibiting him who ought to have been slain, otherwise he shall undergo sentence, or if he has refused the country, he shall be treated as convicted, so that he cannot remain in the country, and if the king should sustain him in the country, this would be to the injury of the accuser. But if there be not any one, who has from the commencement sued him well, nor any one who has charge against him, then the outlawed person may remain in the country under the peace of the lord the king.

16.  
It will be incumbent, that the accuser proceed against him in the words of his charge.

f. 134.

Likewise let it be that a person has several sons, and the eldest has committed a felony in the lifetime of the father, and is outlawed in the lifetime of the father, upon the death of the father it is to be seen, to whom the right and the inheritance ought to descend. And it seems that it ought not to the outlawed son, since through his outlawry he has forfeited his right of

17.  
Likewise, if a first-born son out of several has committed a felony during the lifetime of the father,

patris, et  
fuerit utla-  
gatus in  
vita patris.

adeptum sed adipiscendū, non ergo restituetur ad successionem, quia hoc esset, ut videtur, in præjudiciū dñi capitalis, quod esse non debet. Si autem in vita patris moreretur, cū esset restitutus, sine hærede, tunc, quasi non esset in rerum natura, descenderet hæreditas ad alios hæredes ppinquiores, ut quibusdam videtur, quod non est verum secundū alios, qui meliūs sentiunt de talibus, quia cū antenatus moriatur in vita patris vel alterius antecessoris, sive inlegatus fuerit sive non, forisfaciat omnibus hæredibus suis præsentibus, apparentibus & futuris, licet tunc non existentibus, propinquis & remotis, fratribus, sororibus, & de carne propria exeuntibus, totum jus quod habuit die quo felonia fuit perpetrata, vel q̄ ei accidere posset ab aliquo antecessore, si antecessor supervixerit, & feloniam non commisisset, & qui mortuo antecessore futuri essent sui hæredes, si jus ei descēdisset, quia licet gradus vacuus sit per mortem suam, si ad pacem domini regis moreret sine felonia, oporteret quòd de eo fiat mentio in descensu ad hæredes de carne sua exeuntes sic. Et unde jus à tali antecessore descendisse debuit tali, ut filio & hæredi si viveret, & à tali, tali ut filio & hæredi talis. Et hoc dici debet de fratribus & sororibus & aliis hæredibus remotioribus, propriis liberis non existentibus. Et sic non poterit dici immediatè quòd jus descendit à tali antecessore tali nepoti, vel nepti, fratri vel sorori, vel hæredi remotiori, nulla facta mentione de eo qui obiit in vita antecessoris, & sic forisfacit actionem & hæreditatem ille qui feloniā cōmisit, sive moriatur in vita antecessoris sive post mortem, & sive utlagat<sup>9</sup>, vel in vita

succession, and not only what he had acquired, but what he was likely to acquire, he shall not be restored there-fore to the succession, because this would be, as it seems, to the prejudice of the chief lord, which ought not to be. But if he died in the lifetime of his father, after he had been restored, without an heir, then, as if in the nature of things he were not, the inheritance would descend to the other next heirs as it seems to some, which is not true according to others, whose opinion in such subjects is better, because when a first-born son dies in the lifetime of his father or another ancestor, whether he has been inlawed or not, he forfeits for all his present heirs, apparent and future, although then non-existing, near and remote, brothers, sisters, and springing from his own flesh, every right which he had on the day, on which the felony was perpetrated, or which might devolve to him from any ancestor, if the ancestor had survived, and had not committed a felony, and who upon the death of the ancestor would have been his proper heirs, if the right had descended to him, because although the degree would have been vacant by his death, if he died under the king's peace without a felony, it would be incumbent, that mention should be made of him in the descent to heirs springing out of his flesh &c. And hence the right from such an ancestor ought to have descended to such a one, as to a son and heir, if he were living, and from such a one, to such a one as the son and heir of such a one. And this ought to be said of the brothers and the sisters and the other heirs more remote, if there be no children of his own existing. And so it cannot be said immediately that the right descends from such an ancestor to such a grandson or granddaughter, brother or sister, or more remote heir, no mention having been made of him, who died in the lifetime of the ancestor; and so he who has committed the felony forfeits the action and the inheritance, whether he dies in the lifetime of the ancestor or after his death, and whether out-

and has  
been out-  
lawed in  
the lifetime  
of the  
father.

antecessoris restitutus, & sic forisfacit actionem & jus habitum & habendum. Item hæreditatē propriā, acquisitam & acquirendam, secundū quod fuit in statu, die quo feloniam fuit perpetrata, in dominico & servitio, ad terminum vitæ vel annorum. Item idem dici poterit de fratre postnato & suis hæredibus, de omnibus quæ ei possent accidere. Ex hoc igitur sequitur, ut videatur, quòd antecessor, cujus hæres feloniam fecerit, de qua convict<sup>9</sup> fuerit, post feloniam hæredis dare non poterit nec alienare, non magis quàm ipse felo, cū non sit hæres qui posset donationem & factum suum warrantizare, nisi hoc habeat speciale in charta feoffamenti sui, quòd dare possit & assignare, si hæredes defece- rint, vel sit ita, quòd donationē warrantizare non pos- sint prædicta ratione.

18.  
Cum utla-  
gatus cap-  
tus fuerit,  
non alicui  
licitum est  
eum inter-  
ficere, nisi  
in ipsa  
captione  
se defen-  
dat.

Cū verò utlagatus captus fuerit, non erit licitum alicui eum interficere, nisi in ipsa captione, si se velit defendere, quia post captionem, vita & mors erit in manu regis. Poterit quidem rex cū captus fuerit, licet ritè fit utlagatus & ex causa, ex plenitudine potestatis suæ dare ei vitam & membra, & ut regnum abjuret.

19.  
Quod ali-  
quando  
potest do-  
minus rex  
de gratia  
sua vitam  
concedere  
restitutis.

f. 134 b.

Tenetur etiam aliquando de gratia concedere ei vitam & membra, ut si per infortunium vel se defendendo hominem interfecerit. Tenetur etiā, si nulla subfuit causa utlagariæ, ut si ille qui interfici debuit, viv<sup>9</sup> & san<sup>9</sup> pducatur. Item si min<sup>9</sup> sufficiens sit causa, quia fortè factū p quo fuit utlagatus, non fuit feloniam sed transgressio. Item quia utlagaria nō fuit ritè pmul- gata, vel loco non debito, ut suprā, & secundū q sic vel sic, poterit abjurare regnū, vel in regno remanere, secundū gratiam regis. Itē si clericus ordinatus fue- rit utlagatus, tenetur rex utlagatū remittere ordinario,

lawed or inlawed in the lifetime of the ancestor, and so he forfeits the action, and the right held or to be holden. Likewise his own inheritance, acquired or to be acquired, in the state in which it was on the day on which the felony was perpetrated, in domain or in serfage, for a term of life or of years. And the same may be said of a second-born son and his heirs, respecting all things which may happen to him. From this therefore it follows, as it seems, that an ancestor, whose heir has committed a felony, of which he has been convicted, cannot after the felony of the heir give nor alienate, no more than the felon himself, since there is no heir who can warrant the gift or his act, unless he has this special [clause] in the charter of his feoffment, that he may give and assign, if heirs have failed, or it be so that they cannot warrant the donation for the reason aforesaid.

But when the outlawed person has been captured, it will not be allowable to any one to kill him, except during the act of capture, if he chooses to defend himself, because after his capture, his life and his death will be in the hand of the king. The king may, when he has been captured, although he has been duly outlawed and for a cause, from the fulness of his power grant to him his life and limbs, and that he may abjure the realm.

18.  
When the outlaw has been seized, it is not allowable for any person to kill him, unless he resists his seizure.

The king is also sometimes bound of grace to grant to him his life and limbs, as if by misadventure or in self-defence he has slain a man. He is bound also, if there has been no subsisting cause of outlawry, as if he who ought to have been slain, is produced alive and sound. Likewise if the cause has been insufficient, because perchance the act, for which he has been outlawed, has not been a felony, but a trespass. Likewise because the outlawry has not been duly proclaimed, or not at the proper place, as above, and according as so and so, he may abjure the realm or remain in the realm, according to the grace of the king. Likewise if a clerk in holy orders has been outlawed, the king is

19.  
That sometimes the king may of his grace grant to persons restored their life.  
f. 134 b.

ubi non fiet nisi degradatio, si se purgare non possit. Clericus dico, sive major sive minor, etiam episcopus vel alius, quia de talibus non poterit rex exequi iudicium, nec iudicium factū in foro seculari de utlagaria ligabit tales, qui in cū Christianitatis se purgare possunt secundū quosdam.

1.  
De homicidio quod palam et pluribus astantibus perpetratum est, et postea de homicidio, quod nullo præsente perpetratum est, et quod dicitur murdrum.

## CAP. XV.

Dictum est suprā de homicidio, quod palam & pluribus astantibus quādoq; ppetratur, nunc autem dicendum de homicidio, q nullo p̄sente, nullo sciente, nullo audiente, nullo vidente clam perpetratur, quod dicitur murdrum, unde inprimis videndum q sit murdrum, quæ causa invētionis, & qualiter quis à murthero excusetur.

2.  
Quid sit murdrum.

Murdrum verò est occulta extraneorum & notorum hominum occisio, à manu hominis nequiter ppetrata, & quæ nullo sciente vel vidente facta est, præter solum interfectorem & suos coadjutores & fautores, & ita quòd non statim assequatur clamor popularis. Occulta dicitur, quia occisor ignoratur, nec scitur, quis ille fuit qui occidit. Item extraneorum & notorum hominum, ut comprehendatis tam masculum quàm fœminam, & sic excludatis animalia bruta, quæ ratione carent. Extraneorum dico, quia sive interfectus cognitus fuerit sive ignot⁹, dicitur Francigena, nisi Englescheria, i. quòd Anglicus sit, probetur p parentes, & coram justitiariis præsenteretur.

3.  
Quæ causa inventionis

Causa verò inventionis murtherorum talis fuit, q in dieb⁹ Canuti regis Danor qui post Angliam acquisitā



bound to remit the outlawed person to the ordinary, where no sentence shall be passed but that of degradation, if he cannot purge himself. I say a clerk, whether in major or minor orders, even a bishop or another, for the king cannot execute judgment against such persons, nor will a judgment of outlawry made in a temporal court bind such persons, who may purge themselves in a court of Christianity according to some.

## CHAPTER XV.

We have spoken above of homicide, which is perpetrated openly and when several persons are standing by, we must now speak of homicide, which is perpetrated secretly, when not any body is present, nor knowing, nor hearing, nor seeing, which is called murder, whence we must first see what is murder, what is the cause of the invention, and in what way a person is excused from murder.

Murder is the secret slaying of foreign and known persons, wickedly perpetrated by the hand of a man, and which has been done when nobody was knowing of it or seeing it, except the slayer only and his coadjutors and supporters, and so that the public cry did not forthwith overtake them. It is called secret, because the slayer is unknown, nor is it known who was the person who slew him. Likewise of foreign and known persons, that you may comprehend male and female, and so exclude brute animals, which are without reason. I say foreign persons, for whether the slaughtered person has been known or unknown, he is called Frankborn, unless Englishery, that is, that he is an Englishman, is proved by his parents, and it is presented to the justices.

And the cause of the invention of murders was of this kind, that in the days of Canute king of the Danes,

1.  
Of homicide which is perpetrated openly, and when several persons are standing by, and afterwards of homicide, which is perpetrated when no one is standing by, and which is called murder.

2.  
What is murder.

3.  
What is the cause

murdro-  
rum.

& pacificatam rogatu baronum Anglorum remisit ad Daciam exercitum suum, & ipsi baronēs Angliæ erga ipsum regem Canutum fidejussores extiterunt, quodd quotquot rex in Anglia secum retineret firmam pacem p omnia haberent, ita q si quis Anglorum aliquem hominū quos rex secum adduxit interficeret, si se super hoc defēdere non posset iudicio Dei, s. aqua vel ferro, fieret de eo justitia, si autē aufugeret & capi non posset, solverentur p eo 66. marcæ, & colligebantur in villa, ubi quis esset interfectus, & idē, quia interfectore non habuerunt, & si in tali villa p paupertate colligi non possent, colligerentur in hundredo in thesauro regis deponēdæ.

4.  
Quid dicitur mur-  
drum.

f. 135.

Et dicitur murdrum extraneorū occisio, & notorum : quia sive not<sup>o</sup> sit vel extrane<sup>o</sup>, ille qui interfectus est, semp reputabitur Frācigena, nisi Englescheria ritē fuerit coram justitiariis præsēntata, p hoc quodd sciri possit q Anglic<sup>o</sup> extiterit. Et qualiter Englescheria p̄sentari debeat, infra plenius dicitur suo loco. Item à manu hominū dicitur, ad differentiā eorū qui à bestiis & animalibus, quæ ratione carent, occidūtur, vel devorantur : & qui non possunt dici murdraī in feloniam, quia animalia, quæ ratione carent, non possunt dici fecisse injuriam nec feloniam. Vel hoc dici poterit ad differentiā eorū, qui mortui sunt p infortuniū, sicut de submersis & oppressis & hujusmodi p infortuniū ubi nulla subest felonia, secundū q inferi<sup>o</sup> dicitur.

5.  
Qualiter  
patria ex-

Excusatur patria quandoq̄ à præstatione quæ datur p murdro, sicut videri poterit in multis casibus subse-

who after the acquisition and pacification of England at the request of the English barons sent back to Denmark his army, and the barons themselves of England came forward as sureties towards king Canute himself, that as many, as the king should retain with himself in England, should have a sure peace in all matters, so that if any of the English should slay any one of the men whom the king had brought with him, if he could not defend himself by the judgment of God, that is by water or iron, justice should be done against him, but if he should run away and could not be captured, sixty-six marks should be paid for him, and they were collected in the vill where any person had been slain, and on that account because they had not produced the slayer, and if they could not be collected in such vill on account of its poverty, they should be collected in the hundred to be deposited in the king's treasury.

And murder is the term used for the slaying of foreign and known persons : because whether he be known or a stranger, he who is slain shall always be held to be Frank-born, unless Englishery has been duly presented before the justices, whereby it may be known that he was an Englishman. And in what manner Englishery ought to be presented, shall be stated more fully below in its own place. Likewise it is said by the hand of men, in distinction from those who are slain or devoured by beasts and animals that are without reason, and who cannot be said to have been murdered feloniously, because animals, that are without reason, cannot be said to have done injury or felony. Or this may be said in distinction from those who have died from misadventure, as in regard to the drowned or the suffocated, or such like from misadventure, where there is no subsisting felony, as will be stated below.

But the country is excused sometimes from the tax which is levied for a murder, as may be seen in many

B B 2

of the invention of murders.

4. What is called murder.

f. 135.

5. In what way the

cusatur a  
murdro.

quent. Inprimis excusatur patria à p̃statione murdri, si interfecto cognitus fuerit, sive captus fuerit sive non, quia ibi convinci poterit feloniam vel p̃ sectam vel p̃ inquisitionem patriæ, & sic q̃ utlagatus sit.

6.  
Si inter-  
fecto cap-  
tus fuerit,  
nullum  
erit mur-  
drum.

Item si interfecto captus fuerit, & iudicium sustinuerit, nullū erit murdrum, quia convincitur feloniam. Itē nullum erit murdr̃, cum quis vulneratus fuerit usq̃ ad mortem & vixerit postea p̃ aliquod tempus, quia tunc potest ipse malefactores detegere, & sic manifestare vel cognoscere p̃ se, utrum ipse sit Anglic<sup>o</sup> vel Francigena, & sic nullum erit murdr̃. Itē licet loqui non possit, nec detegere malefactores, si quis p̃ morte sua confugerit ad ecclesiam & mortem cognoverit, nullum erit murdr̃. Itē de iis, qui mortui sunt p̃ infortunium,

Fleta, f. 70. nullum erit murdr̃, licet in quibusdā partibus de consuetudine<sup>1</sup> aliter observetur, ut si homo mortuus, submersus, vel oppressus & huiusmodi sine culpa alicujus inveniatur, nullum erit murdrum, nec deodanda sunt navis, nec batellus, nec alia catalla de iis qui submersi sunt in mari, nec in salsa nec in dulci aqua wreccum erit,<sup>2</sup> cum sit qui catalla advocet & hoc docere poterit. Itē si in mari, vel in ripa ejus, in flumine publico, vel in ripa ejus<sup>1</sup> (& maximè quaten<sup>o</sup> salsa attigerit) mortuus inveniatur, nullū erit murdr̃, nisi fortè in terra occisus in mare vel in flumen mortu<sup>o</sup> p̃jiciatur, vel vivus nequiter sit p̃cipitatus, q̃ quidē dici posset de omni loco publico, qui in nullius bonis esse dicitur, nisi tantū in bonis ipsius regis. Si autem locus fuerit alicujus universitatis, aliud erit. Nequiter dico, ut si de submersis & oppressis & huiusmodi denunciatur, statim accedant ad mortuum coronatores, antequam corpora sepeliantur, & mortuum videant, & nihilominus diligenter inquirent p̃ decennas & villatas accepto

<sup>1</sup> "De consuetudine." This was abolished by 43 H. III., A.D. 1259.

differs considerably in what follows from the printed text, although it is identical in substance

<sup>2</sup> The text of MS. Rawl. C. 159

cases following. In the first place the country is excused from the tax upon murder, if the slayer is known, whether he has been captured or not, because there the felony can be proved either by a suit or by an inquest of the country, and so that he may be outlawed.

Likewise if the slayer has been captured and has suffered judgment, there will be no murder, because the felony is proved. Likewise there will be no murder, when a person has been wounded to death and has lived afterwards for some time, for then he can discover the malefactors, and so may manifest or make known by himself, whether he is an Englishman or Frankborn, and so there will be no murder. Likewise although he cannot speak nor discover the malefactors, if any one on account of the death has fled to a church and made known the death, there will be no murder. Likewise of those who have died from misadventure, there will be no murder, although in some parts from custom it is otherwise observed, as if a dead man be found drowned or suffocated or such like without any person's fault, there will be no murder, nor are the ship nor the boat nor the chattels of those who are drowned in the sea deodands, nor will there be wreck either in salt or in fresh water, when there is any one who can claim the chattels and can prove it. Likewise if a person be found dead in the sea or on its shores, in a public river or on its bank, (and particularly where it meets the salt water,) there will be no murder, unless by chance having been slain upon the land the dead man has been cast into the sea or into a river, or when alive has been wickedly cast into it, which may be said of every public place, which is the property of no person, except of the king himself. I say wickedly, as if information be given concerning the drowned or the suffocated, and such like persons, let the coroners forthwith visit the dead person, before the body is buried, and let them view the dead body, and nevertheless diligently inquire amongst the tithings

6.  
If the  
slayer has  
been cap-  
tured, there  
is no mur-  
der.

sacram̃to, si ibi sit felonia vel infortunium, & secundū hoc faciat suum officium, & ideò si huiusmodi corpora sepulta fuerint sine visu coronat̃, villata erit in misericordia. Item in omni casu si occisus notus fuerit & Anglic⁹, licet interfector ignoretur, murdrum erit, nisi secundū consuetudinem regni & assisam Englescheria præsenteretur & debito modo, quia non refert utrum non sit omnino præsenteretur vel min⁹ ritè, & ideò qualiter præsenteretur debeat videndum est.

7. Item qualiter debet Englescheria præsenteretur secundū consuetudinem diversorum comitatuum. Britton, l. i. ch. ii. § 15. f. 135 b.

Et sciendum, q̃ statim in ipsa inquisitione & corā coronatorib⁹ præsenteretur Englescheria, sed diversimodè tamen, secundū diversas consuetudines com̃. In quibusdā verò com̃ præsenteretur Englescheria, sive mortuus fuerit mascul⁹ sive fœmina, p̃ duos masculos ex parte pr̃is, & p̃ duas fœminas ex parte matris, de propinquioribus parētib⁹ interfecti, qui olim dicebantur to lange¹ and to bred. In quibusdā verò com̃ præsenteretur p̃ unum masculum ex parte patris & p̃ unā fœminam ex parte matris. Itē in quibusdā comitatib⁹, secundū quosdā, si masculus inveniatur interfectus, præsenteretur Englescheria p̃ unū masculum ex parte patris, & p̃ unā fœminā ex parte matris. Et si fœmina, modo prædicto, p̃ duas fœminas vel ex parte patris tantū vel ex parte matris tantū, quorum quidem nomina irrotulari debent in rotulis coronatorum, coram justitiā in itinere suo præsenteranda, & ubi mutari non possunt personæ nec nomina variari, q̃ si contrā factum fuerit, nulla erit Englescheria cum sit min⁹ ritè facta, & ideò dabitur murdrum, & ideò sic præsenteretur ut sciri possit utrum interfect⁹ Anglicus fuerit vel Francigena, pro Anglico

¹ "to long and to bred," MS. Rawl. C. 160; "to long to brod," MS. Rawl. C. 159.

and the vills upon their oaths, if there has been there any felony or misadventure, and accordingly perform their duty, and for this reason if bodies of this kind should have been buried without the view of the coroner, the vill shall be amerced. Likewise in all cases if the person slain is known and is English, although the slayer is unknown, it will be murder, unless according to the custom of the realm and the assise Englishery has been presented and in due manner, because it does not matter whether it be not at all presented, or not presented in due manner, and accordingly we must see how it ought to be presented.

And it is to be known, that Englishery is forthwith presented in the inquest itself and before the coroners, but in different ways according to the different customs of the counties. But in some counties Englishery is presented, whether the dead person be a male or a female, by two males on the part of the father, and by two females on the part of the mother, of the nearest relations of the person slain, who were formerly said "to lange and to bred." But in some counties it is presented by one male on the side of the father, and by one female on the part of the mother. Likewise in some counties according to some, if a male is found to have been slain, Englishery is presented by one male on the father's side, and by one female on the mother's side. And if a female, in the aforesaid manner, by two females either on the father's side only, or on the mother's side only, whose names ought to be enrolled in the rolls of the coroners, to be presented before the justices on their circuit, and where the persons cannot be changed, nor the names varied, but if it be done otherwise, there will be no Englishery, since it has been not duly done, and therefore murder will be assigned, and accordingly it is so presented, that it may be known, whether the person slain was English or Frankborn, but for an Englishman or a person about whom it can be estab-

7. Likewise in what way Englishery ought to be presented according to the custom of different counties.

f. 135 b.

vero, & de quo constari possit q Anglicus sit, non dabitur murdrum. Si autem Englescheria nulla sit, vel minùs ritè facta, licèt interfectus Anglicus fuerit, pro Francigena reputabitur. Si autem dubium fuerit utrum Anglicus fuerit vel non, & utrum pducti parentes fuerint vel non, hoc p patriam declarabitur. Si autē plures inveniantur occisi, de singulis p se oportet Englescheriā præsentrare. Ut sciatur quādo Englescheria ritè præsentratur & quando non, notandum, quòd si coram coronatoribus p quatuor & coram justitiar p duos, vel coronatoribus<sup>1</sup> per duos, & coram justitiariis p unum vel è contrario, nulla erit Englescheria. Item si nominibus eorū qui pducti sunt vel eorum psonis variatū sit, vel erratum coram justitiariis, non valebit præsentatio, eò quòd in hoc casu non admittitur variatio. Itē si producti parentes non sint parentes mortui sed extranei, vel si producti sunt parentes, ex parte patris, ubi quidam illorum produci deberent ex parte matris & è converso. Item ubi omnes pducī deberent ex una parte, producti sunt ex parte utriusque. Item ubi plures pducī deberent, pducti sunt pauciores, & è contrario. Et idè non valet si ibi fuerit variatio vel defectus. Et quoniam in diversis comitatibus diversimodè p̄sentātur, inquirendum erit in quolibet itinere ab initio quæ sit cōsuetudo præsentrandi Englescheriam.

## CAP. XVI.

1.  
Si male-  
factores  
fugiunt ad  
ecclesiam,  
qualiter  
debeant

Sunt etiā quidā, qui, cum capi deberent, fugiunt ad ecclesiā vel aliū locū religiosum vel privilegiatū, & se tenēt in ecclesia, & quo casu nihil mediū est, nisi q veniant ad pacem dñi regis ad standū recto, si quis versus eos loqui voluerit, vel q cognoscant maleficium

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<sup>1</sup> "vel coram coronatoribus," MS. Rawl. C. 160.



lished that he is English, murder will not be assigned. But if there be no Englishery, or it has been not duly made out, although the person slain has been English, he shall be taken to be Frankborn. But if it be doubtful whether he be English or not, and whether his parents have been produced or not, this shall be declared by the country. But if several have been found slain, it is incumbent to present Englishery in each case by itself. That it may be known when Englishery is duly presented, and when not, it is to be noted that if it be presented before the coroners by four and before the justices by two, or before the coroners by two and before the justices by one, or the contrary, there will be no Englishery. Likewise if there be a variation in the names of those who are produced or in their persons, or there be an error before the justices, the presentment will not be valid, for this reason, because in this case a variation is not admitted. Likewise if the parents produced are not the parents of the dead man but strangers, or if those produced are parents on the father's side, when they ought to be those on the mother's side, and conversely. Likewise when several ought to be produced, fewer in fact are produced, and the contrary. And accordingly it is not valid, if there has been variation or defect. And since in different counties presentments are made in different manners, it will have to be inquired in every circuit from the commencement, what is the custom of presenting Englishery.

## CHAPTER XVI.

There are some persons, who when they ought to be captured flee to a church or other religious or privileged place, and keep themselves in the church, and in which case there is nothing intermediate, except that they come within the protection of the king to stand their trial, if any body wishes to accuse them, or that they

1.  
If male-  
factors take  
refuge in  
a church,  
in what  
way they  
ought to  
abjure the

regnum propter q se tenent in ecclesia, & sic habebit electionē.  
 abjurare, si Et quo casu, si recognito maleficio elegerit regnū ab-  
 cognoscant jurare, eligere debet portū aliquē p quem transire pos-  
 latrocinium sit ad terrā aliam extra regnum Angliæ, quia non  
 et feloniam. tenetur abjurare terrā & potestatē regis p̄cisē, sed  
 Britton, tantū regnū Angliæ. Et cōputari ei debent rationa-  
 l. i. ch. xvii. biles dietæ usq, ad portū illum, & debent ei interdici  
 f. 136. ne exeat regiam viam, nec morā faciat alicubi p duas  
 noctes, nec alicubi se divertat, nec multū declinet à  
 via nisi hoc fuerit ex magna necessitate vel hospitandi  
 causa: sed semper tendat recta via ad portū, ita q ibi  
 sit ad diem sibi datū, & q transfretabit quā citò  
 navē habuerit & ventum, nisi tempestate fuerit impe-  
 ditus, si autem contrā fecerit erit in periculo.

2. Hoc audite, justitiiarii, vel ô vos coronatores, q exhibeo  
 De sacra- à regno Angliæ, & illuc iterum non revertar, nisi de  
 mento, licentia dñi regis vel hæredum suorum, sic me Deus  
 qualiter debent regnum ab- adjuvet, &c. Et in sacramento faciendo, nulla fiat  
 jurare. mentio de aliquo impedimento. Sed quid dicetur sibi  
 Britton, ubi nullum eligere<sup>1</sup> voluerit portum? quia sine portu  
 l. i. ch. xvii. & mari exire poterit usq, in aliud regnum, & tunc non  
 § 3. incompetenter dici poterit, ubi dicitur, quòd elegit  
 Fleta, 45. portum, quòd elegit transitum, per talem villā, via  
 quæ ducit versus Scotiam, vel Hiberniam, vel alibi:  
 sed quòd cognoscere debeat maleficiū, non est semper  
 necesse, quia subicere poterit. Si ad ecclesiam confu-  
 gerit postquā fuerit per patriam condemnatus, sive  
 ante judicium sive post, vel si fugerit ad ecclesiā cū  
 captus fuerit seysitus, & in nullo istorum casuum, cū  
 ad ecclesiam confugerit morari poterit in ecclesia p  
 quadraginta dies, sicut quidam dicunt, sed statim in

<sup>1</sup> "quid dī etur, si nullum eligere," MSS. Rawl. C. 160 and 159.

acknowledge the misdeed for which they keep themselves in the church, and so he shall have an election. And in which case, if having acknowledged his misdeed he has elected to abjure the realm, he ought to choose some port by which he may pass to another land beyond the realm of England, because he is not bound to abjure the land and power of the king precisely, but only the realm of England. And there ought to be computed for him his reasonable travelling expenses as far as that port, and he ought to be interdicted from going out of the king's highway, and from delaying anywhere for two nights, and from entertaining himself anywhere, and from turning aside from the high road except from great necessity or for the sake of lodging for the night, but let him always continue along the straight road to the port, so that he shall always be there on the appointed day, and that he shall cross the sea as soon as he shall find a ship, unless he shall be impeded by the weather; but if he does otherwise, he shall be in peril.

realm, if  
they ac-  
knowledge  
robbery  
or felony.

f. 136.

Hear this, ye justices or ye coroners, that I shall go forth from the realm of England, and shall not return thither again, except with the license of the lord the king or of his heirs, so God me help, &c. And in making this oath, let no mention be made of any impediment. But what shall be said, where he has not wished to choose any port? because he may without a port and sea go forth into another kingdom, and then it may not be unfitly said, where it is said that he has chosen a port, that he has chosen a passage by such a vill, by the road which goes to Scotland or Ireland or elsewhere: but it is not always necessary that he acknowledge the misdeed, for he may submit. If he has taken refuge in the church after he has been condemned by the country, whether before judgment or after it, or if he has fled to the church when he has been captured in seysine, and in none of those cases, when he has fled to the church, can he remain for forty days in the church, as some

2.  
Of the oath,  
by which  
they shall  
abjure the  
realm.

adventu justitiariorum vel coronatorum exire debet & facere legem terræ. Spatium verò quadraginta dierum olim dari solet damnatis per assisam de Clarendone,<sup>1</sup> qui cùm exire deberent regnum, possent per quadraginta dies moram facere & quærere subsidia amicorum.

3.  
Quod non  
debet mo-  
rari in ec-  
clesia ultra  
quadra-  
ginta dies,  
si velit.  
Quid tunc  
agendum  
sit.

Constitutio quidem talis fuit, quòd quamvis aliquis se purgaret iudicio aquæ vel ignis, hic nihilominus regnum abjuraret, & habuit spatium illud, occasione prædicta, quod quidem non est aliis concedendum. Sed quid si ille, qui ad ecclesiam confugerit, exire noluerit ab ecclesia, nunquid poterit per vim extrahi p manum laicalem? non ut videtur, quia hoc esset horribile & nephandum. Videtur igitur quòd ordinarius loci, sicut archidiaconus vel officialis suus, decanus vel persona, hoc facere possent & deberent, scilicet compellere eum exire, quia gladi<sup>9</sup> debet juvare gladium, & juris executio non habet injuriã, & cùm talis exire noluerit nisi compulsus, præsumitur vehementer contra ipsum, q̄ malus sit, & defendere eum in ecclesia nihil aliud erit, quàm (cùm sit latro public<sup>9</sup>) maximè facere contra pacem & contra ipsum regem qui pacem tueri debet ad securitatem omnium, & si talis exire compelli non possit, saltem cùm in ecclesia fuerit per unam noctem ad plus, sic poterit se tenere in ecclesia per quadraginta dies, & per annum & per biennium, si hoc fuerit in voluntate malefactoris. Quid igitur fiet cùm ordinarii timeant irregularitatem & laici excommunicationem? nihil aliud ergo video, nisi q̄ tali denegentur cibaria, ut gratis exeat & petat q̄ contèptibiliter recusavit, & qui tali super hoc cibaria ministraverit,

<sup>1</sup> "de Clarendone." This assise | A.D. 1166. Art. xiv. relates to ab-  
was issued by King Henry II. | juration of the Realm.

say, but forthwith upon the coming of the justiciaries or of the coroners he ought to go forth and obey the law of the land. But the space of forty days was to be allowed formerly to the condemned according to the assise of Clarendon, who, when they ought to go forth from the realm, might have a delay of forty days, and seek the subsidies of their friends.

The Constitution was of this kind, that although a person should purge himself by the ordeal of water or of fire, he should nevertheless abjure the realm, and he had that space on the aforesaid occasion, which is not to be conceded to others. But what if he, who has fled to the church, is unwilling to leave it, can he be dragged out forcibly by a lay hand? Not, as it seems, for this would be horrible and unhallowed. It seems therefore that the ordinary of the place, such as the archdeacon or his official, the dean or the parson, may do this, and ought to compel him to go forth, for the sword ought to assist the sword, and the execution of the law works no injury, and when such a person will not go forth unless compelled, there is a vehement presumption against him, that he is an evil person, and to maintain him in the church will be nothing else than (when he is a public robber) to act in the highest degree against the peace, and against the king himself, who ought to protect the peace for the security of all, and if the said person cannot be compelled to go forth, at least when he has been in the church for one night at most, he may maintain himself in the church for forty days, and for a year and for two years, if this be the pleasure of the malefactor. What therefore shall be done, when ordinaries are afraid of irregularity and laymen of excommunication? I see nothing else, than that they should deny such a person victuals, so that he may go forth gratuitously and seek what he has contemptuously refused, and he, who after this has supplied victuals to the said person, shall be taken to be as it were an enemy of the king and a presumer

3.  
That he  
ought not  
to delay  
in the  
church  
beyond  
forty days,  
if he  
wishes;  
what is  
then to be  
done.

tanquam inimicus regis & præsumptor contra pacē regis cēseatur, & sic fiat de illis qui debent regnū abjurare & in exiliū mitti.

4.  
De divi-  
sione exilio-  
rum.

f. 136 b.

Est enim divisio triplex ad min<sup>o</sup>, aut certorū loco-  
rum interdictio, sicut pvinciæ alicujus, civitatis, burgi,  
vel villæ imperpet, vel ad temp<sup>o</sup>, secundū q. exposcit  
quātitas delicti, secundū quod fuerit maj<sup>o</sup> aut min<sup>o</sup>.  
Item exiliū propter crimen & latā culpam, & omniū  
locorū interdictio imperpetuum, & nisi &c. vel in in-  
sulam deportatio in ppetuum, vel ad temp<sup>o</sup>, q. quidem  
exilium dici poterit, abjuratio regni, sive utlagatio.  
Et si quis ita exulat<sup>o</sup> exilio nō obtēperaverit, pœna  
capitali puniatur, hoc est, si post exiliū tale sine licen-  
tia revertatur.

## CAP. XVII.

1.  
De homi-  
cidio per  
infortu-  
nium et  
casuali.

Dig. l. ix.  
t. ii. § 111.

De homicidio verò casuali, q. multipliciter fieri po-  
test, & de quo suprā tactum est, ut si quis telum in  
feram mittere volens, vel quid tale egerit, vel si cū  
socius luderet cum socio, & jocosā levitate pcusserit,  
vel cū longiūs staret, arcū traheret, vel lapidem pji-  
ceret, & hominem quem non vidit, pcusserit, vel si  
cum pila luderet quis, manū consortis<sup>1</sup> quē non vidit  
pila pcusserit, ita q. gulam alicujus psciderit,<sup>2</sup> & sic  
hominē interfecerit, non tamen cum occidendi animo,  
absolvi debet, quia crimen non contrahitur, nisi volun-  
tas nocendi intercedat, & voluntas & ppositum distin-  
guunt maleficium, & furtum omnino non committitur  
sine affectu furandi. Et secundū quod dici poterit  
de infante & furioso, cum alterum innocentia consilii

<sup>1</sup> "consortis." The proper read-  
ing is "tensoris," as in the Digest,  
and as in MSS. Rowl. C. 160 and  
159.

<sup>2</sup> "preciderit." MSS. eadem, as  
in the Digest.

against the peace of the king, and so let it be done with all who ought to abjure the realm and be sent into exile.

There is a triple division at least, or a prohibition against certain places, as against a province, a city, a borough, or a vill in perpetuity or for a time, according as the quality of the delinquency requires, according as it has been greater or less. Likewise exile on account of crime and fault committed, and a prohibition against all places in perpetuity and unless &c., or transportation to an island in perpetuity, or for a time, which may be called exile, abjuration of the realm, or outlawry. And if a person so exiled has not obeyed his sentence of exile, let him be punished by capital punishment, that is, if after such an exile he has returned without license.

4.  
Of the  
division of  
exiles.

f. 136 b.

## CHAPTER XVII.

But of casual homicide, which may be done in various ways, and which has been touched upon above, as if a person wishing to cast a weapon at a wild beast, or has done something of that kind, or if when companion was playing with companion and has struck him with playful levity, or when he was standing afar off, he has drawn a bow or cast a stone and has struck a man whom he has not seen, or when a person was playing with a ball, he has struck with a ball the hand of a barber, whom he has not seen, so that he has cut a certain person's throat, and so killed a man, nevertheless without having the intention to kill him, he ought to be acquitted, because a crime has not been contracted, unless the will of hurting has intervened, and the will and the purpose distinguish the misdeed, and a theft is never at all committed without the intention of thieving. And according to what may be said of an infant or a madman, when the innocence of design protects the one, and the imbe-

1.  
Of homi-  
cide by  
misadven-  
ture and  
casual.

tueatur, & alterum facti imbecillitas excuset. In maleficiis autem spectatur volūtas & non exitus, & nihil interest, occidat quis, an causam mortis præbeat. Sed ibi distinguitur inter veram causam & infortuniū, de animalibus quæ ratione carent, vel aliis rebus inanimatis, quæ dant occasionē, sicut navis, arbor quæ oppressit, vel huiusmodi. Rectè autem loquendo, res firma sicut domus vel arbor radicata, quandoq, non dant causam nec occasionem, sed facit ille qui se stultè gerit, nec equus multotiens. Item nec navis nec batellus in salsa, licèt in aqua dulci, & hoc p abusio- nem sicut in multis aliis casibus.

## CAP. XVIII.

1.  
De illis, qui  
cāpti sunt,  
quod non  
debent  
spoliari  
bonis suis,  
sed debent  
inde sus-  
tentari.

Qui pro crimine vel feloniam magna, sicut p morte hominis capt<sup>9</sup> fuerit & imprisonatus, vel sub custodia detentus, non debet spoliari bonis suis, nec de terris suis disseysiri, sed debet inde sustentari, donec de crimine sibi imposito se defenderit, vel convict<sup>9</sup> fuerit, quia ante convictionē nihil forisfacit, & si quis cōtra hoc fecerit fiat vic. tale breve.

2.  
Breve,  
quod de  
bonis suis  
sustente-  
tur.

Rex vic. salutē. Scias q pvisum est in cūria nostra corā nobis, q nullus homo capt<sup>9</sup> p morte hominis, vel pro alia feloniam pro qua debeat imprisonari, disseysietur de terris, teñtis, vel catallis suis, quousq, convictus fuerit de feloniam de qua rectatus est: sed quam citò captus fuerit p visum custodum placitorū coronæ nostræ, & p visum tuum & ballivorum tuorū & legaliū hominum, apprecientur catalla ipsius capti, & imbreventur, & salvò custodiātur p ballivos ipsius qui capitur, & qui bonam inveniant securitatem, de respon-



cility of the act excuses the other. But in misdeeds the will is looked at and not the issue, and it does not matter, whether a person slays or supplies the cause of death. But there it is distinguished between a true cause and a misadventure, in the case of animals who are without reason or other inanimate things, which give occasion, as a ship, a tree which has crushed a person, or such like. For rightly speaking a solid thing, such as a house or a tree with roots, do not at any time give cause or occasion, but he does it who conducts himself foolishly, nor a horse on most occasions. Likewise neither a ship nor a boat in salt water, although [so] in fresh water, and this by an abuse as in many other cases.

## CHAPTER XVIII.

Whoever has been captured and imprisoned, or detained under custody for a crime or great felony, as for the death of a man, ought not to be spoiled of his goods, nor disseysed of his lands, but he ought to be sustained from them, until he has defended himself from the crime imputed to him, or has been convicted, because before conviction he forfeits nothing, and if any one has done otherwise, let such a writ issue to the viscount.

1.  
Of those who are captured, that they ought not to be spoiled of their goods, but they ought to be sustained from them.

The king to the viscount greeting. Know thou, that it has been provided in our court before us that no man captured for the death of a man, or for any other felony for which he ought to be imprisoned, should be disseysed of his lands, tenements, or chattels until he has been convicted of the felony, concerning which he has been accused; but as soon as he has been captured, the chattels of the person so captured shall be appraised on the inspection of the guardians of the pleas of the crown and on the inspection of yourself and your bailiffs and loyal men, and shall be inventoried and safely guarded by the bailiffs of him who is captured, and who shall

2.  
A writ that he may be sustained from his goods.

f. 137. dendo coram justitiar nostris, cum ab eis exigantur, salvo tamē eidem capto & familiæ suæ necessariae, quamdiu fuerit in prisoa, rationabili estoverio suo, ut si idem capt<sup>9</sup> fuerit, et corā justitiariis nostris cōvict<sup>9</sup> de felonía unde rectatus est, tunc totum residuū catalorū illorū (ultra estoveriū illud) remaneat nobis, secundū regni nostri consuetudinem, cum termino nostro de terra illa, p unum annū & unū diē. Et si coram pfatis justitiariis nostris se defendere possit, et purgare de felonía sibi imposita, tunc catalla sua sibi quietē remaneant. Et ideò tibi præcipimus, q de cætero ita fieri facias in com̄ tuo & observari. Et firmiter tibi phibem<sup>9</sup>, ne de cætero pdicta occasione manum apponas in terris et catallis alicuj<sup>9</sup>, qui capt<sup>9</sup> fuerit prædicto modo: ne ampliùs inde clamorē audiam<sup>9</sup>. Teste, &c. De illis autē qui in fuga sunt, aliter erit, ut suprā dictum est.

2. Cūm autem taliter captus, coram justitiariis pducend<sup>9</sup> fuerit, pducī non debet ligatis manib<sup>9</sup> (quamvis aliquando compedib<sup>9</sup>, ppter periculū evasionis) et hoc ideò ne videat<sup>9</sup> coact<sup>9</sup> ad aliquā purgationē suscipiēdā. Cūm autē pduct<sup>9</sup> fuerit & de crimine ei imposito accusatus, si crimen statim cōfiteatur, satis planū erit judiciū. Si autē negaverit, & crimen defenderit præcisè, & sit aliquis qui eum appellat p verba legitima appellum facientia, tunc autem defendit oīa præcisè quæ ei imponuntur, & nihil excipit cōtra appellantē, habebit electionē utrum se ponere velit super patriam, utrū culpabilis sit de crimine ei imposito, vel non: vel defendendi se p corp<sup>9</sup> suū. Si autem patriam elegerit, ad defensionem p corp<sup>9</sup> suum ex poenitentia reverti

Qualiter captus produci debet coram justitiariis, et quare justitiarii examinare debent in duello injungendo et judiciis. Glanville, li. 14. c. 1. Britton, l.i. ch. xxiii. § 11.

give good security to answer before our justices, when they shall be required from them, saving only for the captured person and his necessary family, as long has he is in prison, his reasonable estover, so that if the said person be captured and convicted before our justices of the felony of which he is accused, then the whole residue of those chattels (beyond the estover) shall remain to us, according to the custom of our realm, together with our term of that land for one year and one day. And if before our said justices he shall defend himself and clear himself of the felony imputed to him, then his chattels shall remain with him quietly. And therefore we enjoin you, that you otherwise cause this to be so done and observed in your county. And we firmly prohibit you not to lay your hand otherwise on the aforesaid occasion upon the lands and chattels of any one, who has been captured in the aforesaid manner, that we may not hear any more complaint about it. Witness &c. But concerning those who are in flight, it will be otherwise, as has been said. f. 137.

But when a person so captured is to be produced before the justices he ought not to be produced with his hands bound (although sometimes in leg-irons, on account of the danger of escape), and for this reason, that he may not seem compelled to undertake any ordeal. But when he has been produced and charged with the crime imputed to him, if he forthwith confesses the crime, the judgment will be plain enough. But if he should deny, and in precise terms defend himself against the crime, and if any one shall appeal him by words legally founding an appeal, and he then defends himself precisely against everything imputed to him, and makes no exception against the accuser, he shall have an election whether he wishes to put himself upon the country [on the issue] whether he is guilty of the crime imputed to him or not, or of defending himself by his own body. But if he has chosen the country, he cannot return, if he

3.  
How the  
captured  
person  
ought to be  
produced  
before the  
justiciaries,  
and where-  
fore the  
justiciaries  
ought to  
examine  
him in en-  
joining the  
duel and in  
judgments.

non poterit, sed p patriam negotiū terminabitur, nec è cōtra. Si autem p corp<sup>9</sup> suum intret in defensionem, nihil excipiendo: statim vadietur inter eos duellum, si oīa ritè concurrant & principalia maximè appellum facientia, & quæ jungunt duellum, & si fortè appellat<sup>9</sup> hoc omiserit, justitiiarii ex officio suo debent oīa examinare. Inprimis factū & causam appelli, & si factū & causa sufficiat, tunc in primis examinare debent sectā, si benè facta fuerit, ita q nulla sit variatio, ut si appellans unum dixerit in cōm & corā coronatorib<sup>9</sup>, & aliud modò dicat corā justitiariis: non enim admittitur hīc variatio, secūdum q inferi<sup>9</sup> dicetur pleniū.

4.  
Vadiatio  
duelli, et  
si appella-  
tus victus  
fuerit, vel  
appellans.

Si autem oīa benè concurrant quæ jūngunt duellū, tunc dat appellat<sup>9</sup> vadium se defendendi, & appellator vadiū disrationādi, et si appellat<sup>9</sup> victus fuerit, capitalē subibit sententiā, cum exhæredatione & omnium bonorū suorū amissione, & sicut esse debet in omni vel quolibet genere felonīæ. Si autē appellans victus fuerit, gaolæ cōmittatur, tanquā calūniator puniend<sup>9</sup>, sed nec vitā amittit, nec membrū, licet secundum leges ad taliones<sup>1</sup> teneretur, si in pbatōne deficeret, et appellat<sup>9</sup> quiet<sup>9</sup> recederet de appello illo, nisi fortè justitiiarii p aliqua alia suspitione, vel recto, duxerit ulteri<sup>9</sup> retinendū: quod aliquādo faciūt ex causa, sicut cōtigit aliquādo de Roberto Brodegh in cōm Berk. corā M. de Pateshull. Et hæc vera sunt, q appellatus p corp<sup>9</sup> suū se defendere poterit, cū appellat<sup>9</sup> fuerit: nisi aliqua violenta psumptio faciat cōtra ipsum, quæ pbatōnē nō admittit in cōtrariū, p quam dedicere vel defendere possit mortē et felonīā, sicut esse potest, cū quis capt<sup>9</sup> fuerit super mortuū cū cultello cruentato, mortē dedi-

Britton,  
l. i. ch. vi.  
§ 4.

<sup>1</sup> " talionem;" MS. Rawl. C. 160.

repents, to a defence by his own body ; nor on the contrary. But if he enters upon his defence by his own body, making no exception, let battle forthwith be waged between them, if all things duly concur and the principal things especially, which constitute an appeal, and which join battle ; and if by chance the appellee has omitted this, the justices ought officially to examine all things, first of all the fact and the cause of the appeal, and if the fact and the cause suffice, then they ought in the first place to examine the suit, and if it has been well conducted, so that there is no variation, as if the appellor has said one thing in the county and before the coroners, and shall say another thing subsequently before the justices, for a variation is not admitted here, according to what will be said below.

But if all things well concur, which join battle, then the appellee gives security to defend himself, and the appellor gives security to prove, and if the appellee be vanquished, he shall suffer a capital sentence with disherison and the loss of all his goods, and as it ought to be in all or any kind of felony. But if the appellor be vanquished, let him be committed to gaol, to be punished as a calumniator, but he shall not lose his life nor a limb, although according to the law he is liable to retaliation, if he should fail in the proof, and the appellee should retire quietly from that appeal, unless perchance the justices for some other suspicion or some other accusation have thought proper that he should be further detained, which they sometimes do for a cause shown, as happened once concerning Robert Brodegh, in the county of Berks, before Martin de Pateshull. And these things are true, that the appellee may defend himself by his body, when he has been appealed ; unless some violent presumption makes against him, which does not admit of any proof to the contrary, by which he can disprove or defend the [imputed] death or felony, as can be the case, when a person has been captured on a dead body with a

4.  
The pledg-  
ing of  
battle, and  
if the ap-  
pellor or  
the appel-  
lee be van-  
quished.

f. 137 b. cere nō poterit, & hæc est cōstitutio antiqua, in quo casu non est opus alia p̄batione. In quo casu non est necesse p̄bare p corp<sup>o</sup>, nec p patriam, ubi p̄sumptio violēta facit cōtra appellatum. Item si quis jacuerit in domo aliqua de nocte, solus cum aliquo qui fuerit interfectus, vel si duo ibi fuerint vel plures, & hutesium non levaverint, nec plagam à latronibus vel aliis qui interfecerint in defensione facienda nō receperint, vel nec quis hominē interfecerit ostenderint de se vel de aliis, mortem dedicere non poterunt, ut de termino Sancti Michaelis añ regni regis H. nono incipiēte decimo in comitat̄ Kanc. de Adam de Burgh. Eodem modo ferè dici poterit (ut videtur), si quis in domum suā notum vel ignotum receperit hospitandi causa, vel alia hujusmodi, & qui sanus & vivus visus fuit intrare, & nunquā postea nisi mortuus, domin<sup>o</sup> domus (si tunc domi fuerit) vel alii de familia, qui tunc præsentes fuerunt, poenā capitalem non evadent, nisi fortè p patriam fuerint liberati, si justitiiarii perspexerint veritatem p patriā debere inquire.

5. Et p hac suspitione cōstitutum est, ne quis extraneū  
 Ne quis  
 extraneum  
 hospitetur,  
 nisi clara  
 die.  
 hospitetur nisi de clara die, & hæc etiā p̄sumptio maximè esse poterit, ut si dominus & homo suus jacuerint in una domo, & dominus inventus fuerit occisus, homo tenebitur, qui nec clamorem levavit, nec plagā recepit, nec in aliquo se opposuit ad defensionem. Et idem dici poterit de extraneo, quia vix evadere poterit piculum p inquisitionem patriæ, ppter tam gravem p̄sumptionem datam de tam occulto facto. Sed cūm patria veritatem scire non possit de tam occulto facto, qualiter

bloody knife, he cannot gainsay the death, and this is an ancient constitution, in which case there is no need of other proof. In which case it is not necessary to prove f. 137 b. by one's body or by the country, where a violent presumption makes against the appellee. Likewise where a person has lain in any house during the night, alone with some one who has been slain, or two or more have been therein, and have not raised a hue, nor have received any wound in defence from robbers or others who have slain a person, nor have shown of themselves or by others who has slain the person, they cannot gainsay the death, as in the term of St. Michael, in the ninth and tenth years of the reign of king Henry, in the county of Kent, concerning one Adam de Burgh. In the same manner almost it may be said (as it seems), if any one has received into his house a known person or a stranger as a guest or for some similar cause, and who was seen to enter the house well and alive, and never afterwards but dead, the owner of the house (if he was then at home), or others of his family, who were then present, shall not escape capital punishment, unless they are perchance set free by the country, if the justices have seen proper that the truth should be inquired into by the country.

And on account of this suspicion it was ordained, that no one should receive a stranger as a guest except in broad daylight, nor allow him to go away except in broad daylight, and this presumption may be very strong, as if a master and his man have lain in a house, and the master has been found slain, the man shall be detained, who has neither raised a cry, nor received a wound, nor in any respect has exposed himself in his defence. And the same may be said of a stranger, because he can scarcely escape peril by an inquest of the country on account of so grave a presumption arising from so secret an act. But when the country cannot know the truth respecting so secret an act, in what manner

5.  
That no  
one receive  
a guest,  
except by  
daylight.

liberabitur ille, qui sup patriam se posuerit? Revera satis liberat, quia expressè non cōdemnat, sicut dici poterit de charta, cūm satis acquietat ex quo specialiꝝ non onerat. Item poterit factū esse tam occultum, quòd secta sit nulla vel min⁹ ritè facta, tamen calumniari non poterit, quia initium facti sciri non poterit, sicut de veneno dato, & quo casu, non habebit appellat⁹ electionē utrum se ponere velit super patriā, vel defendere se p corp⁹ suum: sed oportet quòd defendat se p corpus suum, quia patria nihil scire poterit de facto, nisi p p̃sumptionem & p auditum, vel p mandatum, quod quidem non sufficit ad probationem p appellante nec p appellato ad liberationem, nisi sit qui dicat (ut suprà) quòd satis liberatur, ex quo non cōdemnatur. Admittitur tamen ex necessitate, quòd appellatus habebit electionem ppter inconveniens quod sequeretur, quia si semper teneretur se defendere p corpus, ita posset quilibet in tali facto alium appellare per campionem conductivum, quod non est sustinendum.

## CAP. XIX.

f. 138. In omni verò causa criminali, quæ sub se cōtinet feloniā, in appello debet fieri mentio de anno, de loco, de die, & hora. Loqui oportet etiam de visu & de auditu. Itē q appellans cōstans sit in dicto suo, & in omnib⁹ circūstantiis, secundū q inferiūs dicetur de exceptionib⁹. Verba autē appelli sunt hæc.

1. De quibus loqui debeat appellans.

2. De appello de morte hominis.

A. appellat B. p talia verba, de morte fratris sui, & si ipse defecerit, tunc p talē, & ita q sunt plures de



shall he be set free, who puts himself upon the country? In truth it sets him free enough, because it does not expressly condemn him, as may be said of a deed, that it releases sufficiently, if it does not specially charge. Likewise an act may be done so secretly, that no suit can be made or none can be duly made, nevertheless a charge cannot be brought, because the commencement of the act cannot be known, as in the case of poison being administered, and in which case the appellee shall not have an election, whether he will put himself on the country, or defend himself by his own body, but it is incumbent that he defend himself by his own body, for the country can know nothing concerning the act, except upon presumption or on hearsay, or by a mandate, which does not suffice for proof for the appellant, nor for the appellee for his release, unless there is some one who says (as above), that he is sufficiently released, since he is not condemned. It is admitted, however, of necessity, that the appealed should have an election on account of the inconvenience which would follow, because if he was always bound to defend himself by his body, any one in such a case would be able to appeal another by a hired champion, which is not to be endured.

## CHAPTER XIX.

In every criminal cause, however, which comprises in itself felony, mention ought to be made in the appeal concerning the year, the place, the day and the hour. It ought likewise to speak from sight and from hearsay. So that the appellant be consistent in his saying and in all the circumstances, according to what will be said below concerning exceptions. But the words of the appeal are these.

A. appeals B. in such words concerning the death of his brother, and if he should fail, then by such an one and so that there are several concerning one and the

1.  
f. 138.  
Concern-  
ing what  
things an  
appellor  
ought to  
speak.

2.  
Of an  
appeal con-  
cerning

uno & eodē facto. A. appellat B. de morte C. fratris sui, quòd sicut ipse A. & C. frā<sup>9</sup> su<sup>9</sup> essent in pace Dei & dñi regis apud talē locū, faciendo quoddā tale, vel transiendo à tali loco usq. ad talem locū, tali die, tali anno, & tali hora: venit idem B. cum talib<sup>9</sup> nominandis, & nequiter & in felonia & in assultu p̄meditato, & cōtra pacē dñi regis ei datā, fecit idē B. p̄dicto fratri suo C. unā plagā mortālē in capite quodā gladio, vel aliquo alio genere armorū molutorū, dum tamē non de baculo nec lapide, vel alio instrumento (secundū quosdā) q. dici non possit armū molutū, ita qd' obiit infra triduū de plaga illa. Et quòd fecit hoc nequiter, & in felonia, & cōtra pacē dñi regis, offert se disrationare versus eum ubicunq. p. corpus suū: sicut ille qui præsens fuit, & hoc vidit, & sicut curia dñi regis cōsiderat. Et si de eo malē cōtigerit, p. corp<sup>9</sup> talis fratris sui vel alterius parentis C. qui similiter hoc offert disrationare p. corp<sup>9</sup> suum, sicut curia cōsideraverit: & sic ulterius de plurib<sup>9</sup> aliis, si de tali malē contigerit. Et qui omnes loquātur de visu suo sine testimonio, quòd plures possūt appellare unū de uno & eodē facto, et eodē vulnerē. Et si appellat<sup>9</sup> versus unū ex plurib<sup>9</sup> se defenderit, vel p. iudicium quiet<sup>9</sup> recesserit, versus omnes alios liberabitur, & quiet<sup>9</sup> recedet. Sed si un<sup>9</sup> appellantiū moriatur, vel defaltā fecerit, nihilominus tamē integra erunt aliorū appella. Itē si de primo appellante, quocunq. modo, vel quibusdā illorū malē contigerit, illi qui superstites fuerint ad disrationē faciendā admittūtur. Possunt etiā plures appellari p. eosdē de fortia, secūdum q. inferiūs dicetur.

3. Itē possunt plures appellari à plurib<sup>9</sup> de diversis  
 Quod pos- factis & plagis diversis, & quo casu, victoria uni<sup>9</sup> ap-  
 sunt plures

same act. A. appeals B. concerning the death of his brother, that just as A. himself and C. were in the peace of God and of the lord the king in such a place, whilst doing a certain thing, or passing from such a place to such a place, on such a day, in such a year, at such an hour, the said B. came with such persons to be named and wickedly and feloniously and with a premeditated assault and against the peace of the lord the king granted to him, the said B. inflicted on his said brother C. a mortal wound in the head with a certain sword or some other sort of edged weapon, provided it be not with a stick, nor a stone, nor some other instrument according to some, which cannot be called an edged weapon, so that he died within the third day of that wound. And that he did this wickedly and feloniously and contrary to the peace of the lord the king, he offered to prove this against him anywhere whatsoever by his body, according as he, who was present and saw it, and according as the court of the lord the king shall adjudge it. And if it happens ill with him, by the body of so and so his brother or some other relation of C. who in like manner offers to prove it by his own body, as the court shall adjudge, and so further by several others, if it should happen ill with so and so. And all of whom speak from their own eyesight without hearsay, so that several may appeal one person for one and the same act and the same wound. And if the appellee has defended himself against one out of several, or has retired acquitted by a judgment, he will be set free against all and will retire acquitted. But if one of the appellants dies or makes default, nevertheless the appeals of the others will be undisturbed. Likewise, if concerning the first appellant in any way or concerning any of them it has fared ill, those who survive are admitted to prove. Several also may be appealed by the same persons for being accessories, according to what shall be said below.

Likewise several persons may be appealed by several concerning different acts and different wounds, and in <sup>3.</sup> That several

appellari,  
sicut unus  
de morte  
alterius.

pellati de una plaga versus unū appellatiū, aliū appellatum de alia plaga versus aliū appellatē non liberabit, sed nec alii appellati de diversis plagis cōvincuntur si un<sup>o</sup> eorū victus fuerit, sed quilibet eorum defendet causam suā ppriā, & sunt verba appelli hujusmodi hæc.

4.  
Verba ap-  
pelli de  
morte fra-  
tris, vel  
alterius.

A. appellat B., quòd cū ipse & C. frater su<sup>o</sup> essent in pace Dei & regis, &c. (ut suprā) venit idem B. cum C. supradicto appellato, & cum aliis nominandis, & nequiter & in feloniam, &c. (ut suprā) fecit eidē C. unā plagā mortālē tali loco, quadā bisacuta, & de qua (si mortuus non esset de prima) mortu<sup>o</sup> esset de plaga illa secūda, & quòd hoc fecit nequiter, & in feloniam, offert se, &c. (ut suprā). Et ita dici poterit de pluribus appellatis & appellatib<sup>o</sup> de diversis plagis, sicut dictū est de p̄dictis qui p̄sentes sunt. Si omnes p̄sentes sint tam de fortia quàm de facto, p̄cedatur cōtra omnes p̄ ordinē: dum tamē illi de fortia non respōdeant, antequam factum cōvincatur. Si autē omnes tam de fortia quàm de facto absentes sint, tunc p̄cedatur cōtra eos p̄ ordinē, ut suprā pleniùs de requirēdis reis & fugitivis. Si autem quidā illorum p̄sentes, & quidam absentes sunt, tunc per ordinem p̄cedatur, ita tamen quòd factum priùs convincatur.

f. 138 b.

5.  
Item appel-  
lum de  
fortia.

Idem A. appellat talē de fortia, q̄ cū ipse & C. frā suus essent in tali loco, &c. ut suprā, venit idē talis cum p̄dicto B. appellato de facto, s. et cum aliis nominādis, et tenuit ipsū C. fratrē suū, quādiu idē B. ipsum infecit, vel vinxit eum, vel fuit in auxilio vel cōsilio qualicūq̄ modo, vel p̄cepto, vel mandato quo

which case the victory of one of the parties appealed for one wound in respect of one of the appellants, shall not acquit another party appealed for another wound in respect of another appellant, nor are the others who are appealed for different wounds convicted, if one of them has been vanquished, but each must defend his own proper cause, and the words of the appeal are of this kind.

persons,  
just as one,  
may be  
appealed  
for the  
death of a  
man.

A. appeals B., that when he and his brother were in the peace of God and of the king &c. (as above) the said B. came with the said C., the appellee, and with others to be named, and wickedly and feloniously &c. (as above) inflicted on the said C. one mortal wound in such a place, with a certain sharp cutting weapon, and from which, if he had not died of the first, he would have died of the second blow, and that he did this wickedly and feloniously, he offers himself &c. (as above). And so it may be said concerning several appellees and appellants concerning different wounds, as has been said concerning the aforesaid, who are present. If all are present, the principals and the accessories, let the proceedings be against all in order, provided the accessories are not called upon to answer, before the fact is proved. But if all are absent, as well accessories as principals, then let proceedings be taken against them in order, as has been stated above concerning requisitions of defendants and fugitives. But if some of them are present and some absent, then let proceedings take place in order, provided, however, that the fact be first proved.

4.  
The words  
of an ap-  
peal con-  
cerning the  
death of a  
brother, or  
of another  
person.

The same A. appeals so and so as an accessory, that when he and his brother C. were in such a place &c. as above, the said so and so came with the aforesaid B., who is appealed as a principal, and with others named, and held his brother C., until the said B. slew him, or bound him, and was helping or counselling in some way either by precept or mandate, so that C. himself was slain.

f. 138 b.

5.  
Likewise  
an appeal  
against an  
accessory.

maj<sup>9</sup> ipse C. fuit intfect<sup>9</sup>. Et q hoc fuit nequĩ & in felonia, offert se, &c. Et ideò dico nequĩ, quia multotiens illi qui nequĩ intficiuntur, vel occidũtur, tenti sunt ab amicis bono animo, & nō p malitiā: et ideò tutum & honestũ est de animo & voluntate diligent inquirere.

6.  
Qualiter  
debent ap-  
pellati de-  
fendere.

Et B. appellatus de facto similiĩ venit, & defendit omnē feloniam & pacē dñi regis infractam, & quicquid est cōtra pacē dñi regis, & mortē & oīa quæ versus ipsum pponũtur, & totũ de verbo in verbũ secundũ q cōtra ipsum pponitur, et tunc habebit electionē ponēdi se sup patriā, vel defendendi se p corp<sup>9</sup> suũ: sic dicendo: Et q idē inde culpabilis nō sit, ponit se sup patriā de bono & malo (si patriā elegerit) vel parat<sup>9</sup> est defendere versus eum p corp<sup>9</sup> suũ, sicut curia dñi regis consideraverit. Et in quo casu, cũ se defenderit p corp<sup>9</sup> suum, debet justitiari<sup>9</sup> inprimis examinare, ad hoc q jungatur duellũ inter eos (nisi factum fuerit manifestũ & criminale), quale sit factum, & quæ causa p qua fit appellũ. Poterit enim factũ esse ita leve, quòd nō jacebit appellũ, ut si levis transgressio sit, vel si simplex injuria. Itē examinare debet p quæ verba factum sit appellum in curia vel in cōm. Item qualĩt respōdit ad appellum, et qualĩt se defendere voluerit, p corp<sup>9</sup> vel p patriam. Vel si ita simpliciter dicat, quòd velit se defendere sicut curia dñi regis consideraverit, nisi plus dicat, non erit defensus, quia non ptinet ad curiā regis instruere eum, qualiter se defendere debeat. Si autē sic dicat, parat<sup>9</sup> sum defendere, vel p corp<sup>9</sup> meum vel p patriam, sicut curia dñi regis consideraverit, videtur per hoc quòd auferat sibi electionem, quia non debet curia regis ipsum arcare magis ad unum quàm ad aliud, nec ei necessitatem imponere quomodo se defendere debeat, cũ habeat electionē. Igitur ad unum se tenere debet, sed cũ

And that this was done wickedly and feloniously, he offers himself &c. And for this reason I say wickedly, because on many occasions those who are slain or killed wickedly, have been held by their friends with good intentions and not from malice, and therefore it is safe and honest to inquire concerning the mind and intention.

And B. who is appealed as a principal, comes in like manner, and counterpleads all the felony, and the breaking of the peace of the lord the king, and whatever is against the peace of the king, and the death and every thing which is propounded against him, and the whole word for word according as it is propounded against him, and then he shall have an election of putting himself on the country or of defending himself by his body, saying thus, and that the said person is not guilty thereof, he puts himself upon the country for good or for evil (if he has chosen the country), or he is ready to defend himself by his body against the accuser, as the court of the lord the king shall determine. And in which case, when he defends himself with his own person, the justice ought first to examine, in order that battle should be joined betwixt them (unless the act be manifest and criminal), what is the quality of the act, and what the cause for which there is the appeal. For the act may be so slight that an appeal will not lie, as if the trespass be light, or the injury simple. Likewise he ought to examine by what words the appeal has been made in the court or in the county. Likewise in what way he answered the appeal, and in what way he wished to defend himself, by his body or by the country. Or if he has simply said, that he wishes to defend himself as the court of the lord the king considers proper, it seems that through this he takes away from himself the choice, because the court of the king ought not to confine him more to one than to the other, nor to impose upon him a necessity as to how he should defend himself, when he has an election. Therefore he ought to keep

6.  
How the  
parties ap-  
pealed  
ought to  
make their  
defence.

patriam elegerit, non erit in voluntate sua quam, patriā, sed in voluntate judicis, licet ex certis causis<sup>1</sup> certas possit recusare personas quācumq; patriā elegerit, ut si patriā nativitatis, & alibi extra patriā suā deliquerit. Poterit enim esse fidelis in patria nativitatis; & alibi infidelis.

7. Item cū p corp<sup>o</sup> se defendere elegerit, p hoc qd' transiit aetate, declinare poterit duellum, sicut infra dicitur de exceptionib<sup>o</sup>: sed cū semel sic duellū declinauerit, si ex poenitentia recurrere voluerit ad defensionē p corp<sup>o</sup>, nō audietur, quia non admittitur in hoc casu variatio.

8. Cū autē elegerit defensionē p corpus suum, & oīa cōcurrant quæ jungunt appellū, statim vadietur duellū, & quo casu si à plurib<sup>o</sup> appellat<sup>o</sup> fuerit de uno facto & una plaga, et versus unum se defenderit, recedet quiet<sup>o</sup> versus omnes alios appellantes, et etiā de secta regis, quia p hoc purgat innocentiam suam versus omnes, ac si se poneret sup patriam, & patria omnino ipsum acquietaverit. Si autem neutrum istorum facere voluerit, quasi convictus & indefensus remanebit.

9. Item cū plures sic appellaverint unum de uno facto, & de una plaga, & primus appellans post duelli vadiationem, antequam percutiatur, moriatur, vel sine sui culpa inutilis ad pugnandum efficiatur, vel si de eo humanitūs contigerit, ille qui superstes fuerit disrationabit, & ad diem duelli, quo ille primus venire debuit, veniat armatus, & eodē die duellū pcutiat, & ita fiat de pluribus appellantib<sup>o</sup> sicut de isto secundo, si de

Si duellum declinare noluerit per hoc, quod transiit aetatem.

Si omnes concurrunt, qui jungunt appellum, statim vadietur duellum.

Si plures appellaverint unum, sed de diversis factis, sicut de diversis plagis.

f. 139.

<sup>1</sup> "certa causa," MS. Rawl. C. 160.



himself to one, but when he has chosen the country, it will not be at his option what country, but at the option of the judge, although he may refuse certain persons for certain causes, whatever country he may have chosen, as if [he has chosen] the country of his birth, and he has been a delinquent elsewhere than in his own country. For he may have been faithful in the country of his birth, and elsewhere unfaithful.

Likewise when he has chosen to defend himself with his own person, he may decline battle, because he has passed the age, as will be explained below concerning exceptions, but when he has thus once declined battle, if on repentance he wishes to have recourse again to a defence with his own person, he shall not be listened to, because a variation is not admitted in this case.

But when he has chosen a defence with his own person, let battle be at once waged, and in which case, if he shall have been appealed by several persons for one act and one blow, and he defends himself [successfully] against one person, he shall retire acquitted against all the other appellors, and even upon the suit of the king, because by this he purges his innocence against them all, as if he had put himself upon the country, and the country had altogether acquitted him. But if he is not willing to do either of these, he shall remain as it were convicted and undefended.

Likewise when several have so appealed one person for one act, and for one wound, and the first appellant after the wager of battle dies before he is struck, or without any fault of his own is rendered useless for fighting, or if any human casualty befalls him, he who has survived shall derayne, and on the day of the battle, on which the first of them ought to have come, shall come armed, and on the same day shall begin the battle, and so let it be with several appellors, as with the second of

aliis aliquid contingat humanitùs. Si autē ille prim<sup>o</sup> appellans sequi noluerit & defaltā fecerit, vel si p̄sens se retraxerit, aliud erit.

10.  
Si ante  
duellum  
percutsum  
omnes ap-  
pellantes  
mori con-  
tingat.

Si autem ante duellum percutsum omnes mori contigerit, vel omnes efficiantur inutiles ad pugnandū, sic cadit appellū. Sed tamen appellatus ppter hoc non defenditur à felonia, licet defendatur de appello. Et ideò rex sequi possit p pace sua, si voluerit. Si autē ante duellum percutsum appellatū mori contigerit, sic cadit appellū, & nūquam convincentur de felonia. Si autem appellat<sup>o</sup> ab uno ex plurib<sup>o</sup> sic appellantibus vict<sup>o</sup> fuerit, hoc aliis sufficiet ad victoriam, quia p unum appellantem convinci poterit unicum factum & una felonia. Cū autē primus appellans unum sic appellaverit de uno facto, & aliū vel plures de forcia, & de consilio vel p̄cepto, statim ante duellum vadiatum appellatus de facto non est p plegios dimittendus, nisi hoc fuerit de gratia, & tunc p ballium, s. corpus p corpore, & appellati de forcia sunt replegiabiles, donec ille de facto vincatur, vel se defenderit: & percutso duello, si appellans victus fuerit, illi de forcia & p̄cepto p iudicium recedent quieti de appello, quia ubi factum nullum, ibi forcia nulla, nec p̄ceptū nocere debet, cū injuria nullum habet effectum, & aliis appellantibus respondere non debet, ut p̄dictū est, de uno & eodem facto, de quo semel se defenderit versus unum.

11.  
Si autem  
appellatus

Si autem appellatus de facto victus fuerit, tunc primò tenentur respondere appellati de forcia & p̄cepto,

them, if any human casualty befalls the others. But if the first of them has been unwilling to follow it up and has made default, or if being present he has retracted, it will be a different thing.

But if before the battle is begun it should have hap-<sup>10.</sup>  
 pened for all [the appellors] to die, or all are rendered <sup>But if before the battle is begun all the appellors happen to die.</sup>  
 useless for fighting, the appeal so falls to the ground. But nevertheless the party appealed is not on that account defended from the felony, although he is defended from the appeal. And accordingly the king may prosecute him for his peace, if he so wills. But if before the battle is commenced the person appealed has happened to die, the appeal is at an end, and they will never be convicted of felony. But if the party appealed has been vanquished by one out of several such appellors, this will suffice for a victory to the others, for a single act and a single felony may be proved to conviction by a single appellor. But when the first appellor has thus appealed one person for one act, and another or several as accessories in the way of force and of counsel or precept, the person appealed for the act is not forthwith to be dismissed upon sureties before the battle is waged, unless this be done of grace, and then by bail, that is body for body, and the persons appealed as accessories are bailable, until the principal has been convicted, or has defended himself: and after the battle is commenced, if the appellor has been vanquished, those, who are appealed as accessories by force or by counsel, shall by the judgment retire acquitted of the appeal, for where there is no act, there neither force nor counsel can be accessory, since the injury has had no effect, and he ought not to answer the other appellors, as already said, concerning one and the same act, concerning which he has defended himself successfully against one appellor.

But if the person appealed for the act has been van-<sup>11.</sup>  
 quished, then the parties appealed as accessories by force <sup>But if the party</sup>

victus  
fuerit de  
facto, tunc  
demum  
procedatur  
versus alios  
de fortia,  
et de prae-  
cepto.

nec ulterius erunt replegiabiles, quia cum factū con-  
victum sit, tunc primò p̄sumi poterit q̄ subfuit forcia  
& p̄ceptū, & idè respondeant eodem die, & eodē die  
vadietur duellum inter primum appellantem & appel-  
latos de forcia vel p̄cepto, secundū q̄ p̄ ordinem po-  
siti sunt in appello, ita quòd ille primò de forcia, &  
postea ille de p̄cepto, quia forcia quodammodo sub se  
continet factum, quod quidem non facit praeceptum.  
Sed quare non possunt alii appellātes à primo & prin-  
cipali appellante, eo omisso, jungere duellum cum ap-  
pellatis de forcia & praecepto? Et est ratio (ut vide-  
tur), quia forcia & praeceptum sunt quasi sequela facti  
principalis, & ita sunt conjuncta facto & annexa, q̄ à  
facto non separantur, quia vuln<sup>o</sup>, forcia & praeceptum  
generant unicum factum: non esset vulnus fortè, si non  
adfuisset forcia, nec vuln<sup>o</sup> nec forcia nisi praeceptum  
praeceisset.

12.  
Si plures  
unum ap-  
pellaverint  
de morte  
alicujus de  
pluribus  
plagis.

Contingit etiam quandoq̄ quòd plures appellant unum  
de morte alicujus, de pluribus factis & diversis plagis  
mortalibus, & quo casu, plura sunt appella & diversa,  
propter pluralitatem factorum: & unde quilibet eorum  
poterit de una plaga mortali appellare unum principa-  
liter sine aliis per se, & alios plures de forcia & prae-  
cepto. Poterit etiam alius à primo appellare alium de  
alia plaga mortali & alio facto, & eodem modo sicut  
primus, & ita deinceps de diversis plagis, tertius ter-  
tium, & quartus quartum, & sic plures deinceps, &  
eodem modo. Et de verbis appelli satis dictum est  
suprà, sed tamen appellatus omnibus appellantibus

f. 189 b. simul & semel respondere nō poterit quamvis omnib<sup>o</sup>

or by counsel are bound for the first time to answer, nor shall they be further bailable, for when the act has been proved, then for the first time it may be presumed that there has been force or counsel in support of it, and therefore let them answer on the same day, and on the same day let battle be waged between the first appellor and the appellees for force or for counsel, according to the order in which they are placed in the appeal, so that the one first of all for force, and afterwards the other for counsel, for force somehow or other comprises under it an act, which counsel does not do. But why may not the other appellors after the first and principal appellor, if he be omitted, join battle with the appellees for force and for counsel? And the reason (as it appears) is because force and counsel are as it were the accompaniments of the principal act, and are so conjoined with and annexed to the act, that they are not separable from the act, because the wound, the force, and the counsel give birth to a single act: there would not perhaps be a wound, if force were not assisting, nor a wound nor force, unless counsel had preceded.

It happens also sometimes, that several appeal one person for the death of some one, resulting from several acts and divers mortal wounds, and in which case there are several and divers appeals, on account of the diversity of acts; and hence each of them may appeal one person concerning one mortal wound principally without others by himself, and others concerning force and counsel. Another person from the first may likewise appeal another concerning another mortal wound and another act, and in the same way as the first, and so in succession concerning different wounds, a third may appeal a third, and a fourth a fourth, and so several in succession and in the same manner. And sufficient has been said above concerning the words of an appeal, but nevertheless the party appealed cannot answer at once and together to all the appellors, although he is bound to answer them

12.  
If several have appealed one person concerning the death of another from many wounds.

f. 139 b.

principaliter respondere teneatur. Oportet igitur quòd uni respondeat primò, & sic deinde aliis p ordinem successivè. Respondeat igitur appellatus A. qui prim⁹ est in ordine appellantium, & ipse excipiat contra ipsum, & petat sibi allocationes fieri, & quo casu, si appellat⁹ appellum declinaverit versus A. primum appellantem, ppter hoc non cadunt appella aliorum, sed eodem die respondeat secundo appellanti, & si eodem modo appellum ipsius declinaverit, respondeat tertio eodem die, & sic fiat de pluribus & quamdiu aliquis remanserit principaliter appellans, non erit recurrendum ad sectam dñi regis, nisi tunc demū cū omnes appellantes defecerint in appello suo.

13.  
Si unus  
plures ap-  
pellaverit  
de diversis  
plagis mor-  
talibus.

Si autem unus plures appellaverit de diversis plagis mortalibus, & de diversis factis in forma supradicta, & primus appellatus appellum declinaverit, recedet ille quiet⁹ p iudicium, & similiter appellati de forcia & præcepto de eodē facto, quantum ad appellum tale, non tamen quantum ad sectam regis, si rex sequi voluerit. Si autem appellans appellatum devicerit p duellum, vel p patriam, & adhuc tenet appellum versus alios principaliter appellatos de aliis & diversis plagis, & etiam versus alios appellatos de forcia & pcepto de prima plaga & primo facto quos quidē omcōvincere oportebit, antequā regressum habeat appellans versus alios principaliter appellatos de facto & aliis & diversis plagis: & omnib⁹ istis ita cōvictis, p ordinē pcedatur versus alios quousq; omnes se defenderint vel cōvincant, & sic erunt plura & diversa appella ppter diversa facta.

all as principals. It behoves therefore that he answer one first of all, and so the others successively in order. Let the party appealed therefore answer A. first of all, who is the first in the order of the appellors, and let him except against him, and let him ask for allocations to be made to him, and in which case, if the party appealed shall have declined the appeal against A. the first appellor, the appeal of the others does not fall to the ground on that account, but let him answer on the second day the second appellor, and if in the same way he shall have declined his appeal, let him answer to the third appellor on the same day, and so let it be done with several, and as long as any principal appellor remains, recourse is not to be had to the suit of the lord the king, unless then at length when all the appellors have failed in their appeal.

But if one has appealed several concerning different mortal wounds and concerning different acts in the form above said, and the first party appealed has declined the appeal, he shall retire acquitted by the judgment, and in a similar manner those appealed for force or for counsel concerning the same act, as far as regards such appeal, but not as regards the suit of the king, if the king wishes to prosecute. But if the appellor has vanquished the appellee by battle or by the country, and he still maintains his appeal against others appealed as principals concerning other and divers wounds, and likewise against others appealed concerning force and counsel regarding the first wound and the first act, all of whom it will behove to convict, before the appellor has recourse against others appealed as principals concerning the act and other and different wounds; and upon all these being thus convicted, let proceedings be taken in order against the others until all have defended themselves or are convicted, and thus there will be several and divers appeals on account of divers acts.

13.  
If one has  
appealed  
several  
concerning  
different  
mortal  
wounds.

1.  
Quod ap-  
pellatus  
det vadi-  
um de-  
fendendi,  
et appel-  
lans det  
vadium  
disratio-  
nandi. Item  
de excep-  
tionibus  
contra ap-  
pellum.

## CAP. XX.

Cum autem appellatus fuerit quis p verba appellum facientia, defensor sive appellat<sup>9</sup> det vadiū defendendi, & appellator vadiū disrationandi, nisi appellatus exceptiones habeat p se, quas pponat ad defensionem suam, antequam intret in responsum.

2.  
Quod quæ-  
dam sunt  
exceptiones  
quæ gene-  
rales sunt  
ad omnia  
placita,  
quædam  
speciales et  
diversæ  
secundum  
diversita-  
tem placi-  
torum et  
appel-  
lorum.

Sunt quædā exceptiones quæ generales sunt ad omnia appella, & sunt speciales & diversæ, secundum diversitatem appellorum, sicut de morte hominis, de pace & plagis vel mahemio & roberia. Item de pace & plagis & imprisonamto. Item de roberia p se. Item de cōbustione p feloniam cōtra pacem. Item de raptu virginum, cōtra pacem, & contra quodlibet istorū appello-  
lorū speciales sunt exceptiones in suo casu.

3.  
Prima ex-  
ceptio et  
generalis  
in omni  
appello de  
secta, si  
bene et  
secundum  
legem terra  
facta sit.

Est quidem ista generalis exceptio & prima in omni appello, s. si secta non fuerit benè facta, quia qui appellare voluerit & benè sequi, debet ille, cui injuriatū erit, statim quàm citò poterit hutesium levare, & cum hutesio ire ad villas vicinas & propinquiores, & ibi manifestare scelera & injurias perpetratas, & continuò accedere debet ad servientes domini regis, si inveniri possint, & deinde ad coronatores, & sic inde sine intervallo ad proximum coñ, vel si in crastino feloniam ppetratæ, vel secundo die teneatur coñ, sufficit p secta, dum tamen pcesserit hutesium, si ad coñ venerit, servientibus & coronat non quæsitis, quia die coñ tenentur omnes adesse. Itē sufficit p secta, si continuò ostendatur regi vel justit, si præsentibus fuerint, scelera

f. 140.



## CHAPTER XX.

But when a person has been appealed by words constituting an appeal, let the defendant or appellee give bail to defend himself, and the appellor bail to derayne, unless the appellee has exceptions for himself, to be brought forward for his defence, before he enters upon his answer.

There are certain exceptions, which are general to all appeals, and there are special and divers exceptions, according to the diversity of appeals, as concerning homicide, concerning a breach of the peace and wounds, or mayhem or robbery. Likewise concerning a breach of the peace and wounds and imprisonment. Likewise concerning robbery by itself. Likewise concerning arson by felony against the peace. Likewise concerning the ravishment of virgins against the peace, and against each of such appeals there are special exceptions in each case.

There is one general and primary exception in every appeal, if the suit has not been well instituted, because he who could appeal and properly sue, he ought, to whom the injury is done, to raise the hue as quickly as possible and to go with the hue to the neighbouring and next villis and there declare the crimes and injuries perpetrated, and he ought immediately to go to the serjeants of the lord the king, if they can be found, and thence to the coroners, and so thence without any delay to the nearest county court, or if the county court is held on the morning after the felony has been perpetrated, or the second day after, it suffices for a suit, provided however the hue has preceded, if he come to the court, without having sought out the serjeants or the coroners, because all are bound to be present on the day of the county court. Likewise it is sufficient for a suit, if the crimes perpetrated are shown to the king or to the justices,

1.  
The appellee give bail to defend himself, and the appellor give bail to derayne.

Likewise concerning the exceptions against an appeal.

2.  
That there are certain exceptions, which are general to all pleas, and certain special and divers according to the diversity of pleas and appeals.

3.  
The first, which is a general exception in all appeals, is concerning the suit, if it has been well instituted and according to the law of the land.  
f. 140.

perpetrata, & ibi dicetur ei quòd eat ad vic. & coronatores. Ad proximum verò & primum cõm in præsencia vic. & coronatorum, fiat appellum p verba appellum facientia (& inferi<sup>9</sup> dicenda) & ipsi vic. & coronatores omnia verba appelli, secundum quod proposita fuerunt, coram eis irrotulari faciant p ordinem & modum appelli, illud, s. tantummodo, nec plus nec minus. Et inprimis ad quẽ cõm venit appellans post feloniam perpetrata, utrum, s. ad primum, secundum vel tertium, & qualiter & quæ verba pposuit in appello de morte hominis. Item si de pace & plagis, quales plagæ fuerunt, recentes vel non recentes, in quo loco, cujus longitudinis & latitudinis. Item si de roberia, de quibus rebus, propriis vel alienis. Et si de pecunia numerata, exprimere debet numerum, & genus pecuniæ. Si autem massa rudis, exprimere debet valorem, si autem formata, qualitatem & p̃cium. Item si vestis, colorem & precium, si pannis, colorem, precium, & numerum ulnarum. Item si animal, tunc genus, pilum & precium. Item si de pace & imprisonment, tunc inquirendũ quale fuerit imprisonment, utrum carcer vel simplex detentio. Item utrum in vinculis vel sine. Itẽ utrũ in ferro, vel ligno vel utroque. Item si de combustionem, qua hora facta fuit, & de omnibus circumstantiis. Item si de raptu, tunc de scissione vestimentorum, & de sanguinis effusione p corruptionem. Item oportet mentionem facere in irrotationem appelli, de anno quo felonia debuit ppetrari, quia ex hoc dabitur appellato exceptio, si in rotulis coronatorum aliter

if they be present, and it be there said to him to go to the viscount and the coroners. But at the next and first county court in the presence of the viscount and the coroners, let an appeal be made by words constituting an appeal (and to be explained below), and let the viscount and the coroners cause all the words of the appeal, according as they have been set out, to be enrolled before them according to the order and method of an appeal, so much only forsooth and neither more nor less. And in the first place to what county court the appellant has come after the perpetration of the felony, whether to the first or the second or the third, and in what manner and what words he propounded in the appeal concerning homicide. Likewise concerning a breach of the peace and wounds, what sort of wounds they were, recent or not recent, in what place, of what length and breadth. Likewise if concerning robbery, concerning what things, his own or another's. And if of countable money, he ought to express the number of the coins and the kind of coins. But if rude bullion, he ought to express its value, and if bullion in ingots, its quality and price. Likewise if a vestment, its colour and price; if cloth, its colour and price and the number of ells. If an animal, then its kind, its coat and its price. Likewise if concerning a breach of the peace and imprisonment, then an inquiry is to be made what sort of imprisonment, whether in a lock-up, or simply detention. Likewise whether with or without chains. Likewise whether in iron or in wood or in both. Likewise concerning arson, at what hour it took place, and concerning all the circumstances. Likewise concerning rape, as well concerning the tearing of vestments and the effusion of blood by intercourse. Likewise it behoves that mention should be made in the enrollment of the appeal concerning the year, in which the felony ought to be perpetrated, for from this an exception shall be granted to the appellee, if in the rolls of the coroner it is differently

contineatur de anno, & aliter coram justitiariis in narratione, ut si in rotulis coronatorum fiat mentio de decem annis, & in narratione coram justitiariis fiat mentio de quinque annis, per hoc cadit appellum propter variationem. Item fit mentio de die, ad quod eadem ratio poterit assignari & etiam alia, quia si appellatus docere poterit per certa judicia & proborum hominum testificationem, se eadem die fuisse alibi, ita quòd nullo modo præsumi posset contra ipsum, quòd interesse posset tali facto, tali die, ppter locum ita remotum, quòd hoc esset impossibile, tunc cadit intentio appellantis. Item fit mentio aliquādo de hora, sed hoc non est multum de substantia negotii, licèt variatum sit de hora, quia appellans in arcto positus, benè potuit horam ignorare, cùm metus justam in se contineat ignorantiam, & si variatum sit de hora, ad hoc quòd detur exceptio vel non, discretioni justitiariorum relinquatur. Item fit mentio de loco, prædicta ratione propter variationem. Item de comitatu fit mentio, sed non propter variationem, quia licèt inter vicec. & coronatorem de comitatu habeatur contentio, ex hoc non præjudicatur appellanti, nec appellato. Sed si appellans ad primum comitatum non venerit per se, cùm commodè venire possit, vel per aliam conjunctam personam, cùm per se venire non possit: tunc sibi præjudicat quantum ad appellum & exceptionem appellato, sicut in casib<sup>9</sup> supradictis. Et si ita variatum fuerit in appello, & narratione, quòd appellans unum dicat, & rotuli coronatorum ptestentur cōtrarium vel

f. 140 b.

contained concerning the year, and differently before the justices in the narrative, as if mention should be made of ten years in the rolls of the coroner, and in the narrative before the judges mention should be made of five years, on this account an appeal falls to the ground through the variation. Likewise mention is made of the day, to which the same reason may be assigned and likewise another, because if the appellee can show by certain judgments and the testimony of honest men that he on the same day was elsewhere, so in no manner could a presumption arise against him, that he could have taken part in such an act, on such a day, on account of the place being so remote, that this would be impossible, then the demand of the appellor falls to the ground. Likewise mention is sometimes made of the hour, but this is not much of the substance of the business, although there be a variation in the hour, for the appellor being under restraint might well be ignorant of the hour, since fear contains a just ignorance in itself, and if there be a variation in the hour, it must be left to the discretion of the justices, whether an exception be allowed or not on that ground. Likewise mention is made of the place for the aforesaid reason, on account of a variation. Likewise mention is made of the county court, but not on account of a variation, because although there may be a dispute concerning the county court between the viscount and the coroner, no prejudice is worked thereby against the appellor or the appellee. But if the appellor has not come to the first county court in his own person, when he could have conveniently come, or through a conjoint person, when he could not come in his own person, then he works a prejudice against himself as regards his appeal, and an exception for the appellee, as in the cases above mentioned. And f. 140 b. if there has been such a variation in the appeal and in the narrative, that the appellor tells one story and the rolls of the coroners bear witness to a contrary or a

diversum, ut si appellans unum nominaverit in appello suo coram justitiariis, & rotuli coronatorum dicant aliud, vel si ibi unum de facto, & corā justitiariis eundem de forcia vel è contrario. Item si in genere armorum variatum sit, quòd ibi de baculo, & hìc de gladio, & generaliter variatum fuerit, cadit appellum per exceptionē.

4.  
Si de re-  
cordo in-  
ter justitiarios  
contentio  
oriatur,  
tunc quid  
agendum  
sit.

Est aliquando dissensio in recordo appelli faciendo inter corōn & vic. cūm uterq, debeat suum habere rotulum, in quibus quandoq, varia contineantur, quandoq, cōcordant & habēt recordum, & quandoque corōn p se sine vic. ut si vic. mortuus fuerit, vel amotus, & rotuli non inveniantur. Si verò rotulus vic. discordet à rotulo coronatoris, et rotuli coronatoris conveniant, tunc eorum stabitur recordo, & quia rotulus vic. nihil operatur nisi ad testimonium. Et quid si rotulus uni<sup>9</sup> coronatoris discordet à rotulis aliorum coronatorū, cūm plures fuerint, standum erit pluralitati. Si autem non nisi duo coronatores & disaccordent, tunc stabitur rotulo ipsius, cum quo concordat rotul<sup>9</sup> vic. Si autem sint ibi quatuor coronatores, & duo dissentiant à duob<sup>9</sup>, nec appareat vic. qui rotulum habeat ad testificandū sive ad testimoniū, tunc stabitur illis duobus qui p se habent aliquod adminiculum, & qui cum appellante cōveniunt. Et idēd audito appello appellantis, & audita respōsione appellati, tunc primò audiantur rotuli coronatorū, ut sciri possit, utrum appellās appellum suum, qd' fecit in comitatu, in aliquo mutaverit coram justitiariis vel in aliquo variaverit, vel si sectam benè fecerit vel non. Et sciendum, quòd in omnib<sup>9</sup> appellis majoribus vel minoribus

different story, as if the appellor has named one person in his appeal before the justices, and the rolls of the coroner tell another story, or if he has appealed one person as a principal, and before the justices he appeals the same person as an accessory or the contrary. Likewise if there be a variation in the kind of arms, as for example, there he has spoken of a staff, and here of a sword, and generally there has been a variation, the appeal falls to the ground, if an exception be taken.

There is sometimes dissension in making the record of the appeal between the coroner and the viscount, when each ought to have his own roll, in which sometimes various things are contained, sometimes they agree and have a record, and sometimes the coroner by himself without the viscount, if the viscount should be dead, or removed, and his rolls are not found. But if the roll of the viscount disagrees with the roll of the coroner, and the rolls of the coroner are in harmony, then their record shall prevail, and because the record of the viscount is only of value as evidence. And what if the roll of one coroner differs from the rolls of the other coroners, when there are several, the plurality of rolls shall prevail. But if there be only two coroners, and they disagree, then the roll of that one shall prevail, with which the roll of the viscount agrees. But if there be there four coroners, and two differ from two, and no viscount appears, who has a roll to testify or for testimony, then those two shall prevail, who have some corroboration on their behalf, and who agree with the appellor. And accordingly, after hearing the appeal of the appellor and after hearing the answer of the appellee, then first let the rolls of the coroner be heard, that it may be known whether the appellor has changed before the justices in any respect the appeal, which he made in the county court, or has varied it in any way, or if he has made his suit fitly or not. And it is to be known that in all major or minor appeals the appellant may not vary or

4.  
If there be  
contention  
between  
the jus-  
tices con-  
cerning the  
record,  
what is to  
be done.

non potest appellans variare vel in aliquo appellum suum mutare, adjicere tamen potest, ut si primò dicat & appellet de plaga sibi facta, sed nō dixerit quibus armis, adjicere potest & arma nominare, s. q. gladio vel bisacuta vel hujusmodi. Itē poterit appellans in judicio actionem suā mutare, maximè de rebus robbatis vel fortè<sup>1</sup> ablatiis, & de atroci injuria, sed non de morte hominis, ut si actionem, quæ criminalis est, primò civiliter intentaverit, poterit illam mutare & agere criminaliter, & sic crescere appellum vel augere. Sed si primò actionem criminalem criminaliter intentaverit, non poterit eam mutare, & agere civiliter, & sic decrescere appellum vel minuere. Auditis igitur verbis appellei & responsione appelleati, & recordo coronatoris, aut stabit appellum aut cadet, secundū q. secta sufficienter facta fuit vel minùs ritè, vel secundū q. variatum fuerit vel non variatum. Quòd si bene omnia concurrant, tunc pponat appellatus exceptiones, si quas habeat, cōpetentes sibi. Nota<sup>2</sup> q. non potest quis in appello suo variare, nec appellum mutare, poterit tamen adjicere & accrescere appellum & non minuere.

5.  
Contra  
appellum  
poterit  
excipere  
appellatus.  
Exceptiones  
contra  
appellum.

f. 141.

Excipere quidem poterit cōtra appellum & dicere, q. primò appellatus fuit de eodem facto ab alio, & p. judicium inde recessit quietus, & ad illā pbandā, vocare poterit rotulos & recorda justitiariorum. Item excipere potest & dicere, quòd justitiiarii itineraverunt in comitatu illo, postquam factum illud fieri debuit, et in itinere illo nulla facta fuit inde mētio, q. secus esset, si appellum tunc esset inceptum, licèt nondum terminatum, & ad hoc cōcordat bre de summonitione. Et q. talis exceptio valida est, pbat̃ de termino Sancti Mich. anno regis H. nonō incipiēte decimo in

<sup>1</sup> "furto" is the reading of MS. Rawl. C. 160.

<sup>2</sup> "Nota." This note is not found

in either MS. Rawl. C. 160 or in MS. Rawl. C. 159.



change in any respect his appeal, he may add however, as if he shall first say and appeal for a wound caused to himself, but shall not have said with what arms, he may add and name the arms, that is, with a sword or two-edged weapon, or such like. Likewise an appellant may change his action at the judgment, chiefly concerning things robbed or carried off by chance, and concerning an atrocious injury, but not concerning the death of a man, as if he shall have first brought in a civil form an action which is criminal, he may change it and proceed criminally, and so increase or amplify the appeal. But if he has first brought in a criminal form a criminal suit, he cannot change it and proceed civilly, and so decrease and diminish the appeal. Upon the words, therefore, of the appeal being heard and the answer of the appellee, and the record of the coroner, the appeal shall either stand or fall, according as the suit has been sufficiently or ineffectively prosecuted, or according as there has been a variation or no variation. But if all things properly concur, then let the appellee propound the exceptions, if he has any, which are competent for him to propound. *Note.*—That a person cannot vary in his appeal, nor change his appeal; he may add, however, and increase his appeal and not diminish it.

He may indeed except against the appeal and say, that in the first place he has been appealed concerning the same act by another person, and that by a judgment he has gone away acquitted, and he may, to prove this, invoke the rolls and records of the justices. Likewise he may except and say, that the justices have made their eyre in that county after the act must have been done, and on that eyre no mention has been made of it, which would be otherwise, if the appeal had been then commenced, although not yet terminated, and the writ of summons agrees with this. And that such an exception is valid, is proved in the term of St. Michael in the ninth and tenth years of king Henry in the county of

5.  
The ap-  
pellee may  
except  
against the  
appeal.  
Exceptions  
against an  
appeal.

f. 141.

Britton, l. i. cōm Hertford, de Henrico Romband indictato de morte  
 ch. xxiv., § 3. hominis, & quòd concealatum fuit in itinere, ita q nulla  
 mentio inde facta fuit, & in secundo itinere resusci-  
 tandum fuit indictamentum, & apposita exceptione  
 ista, recessit H. inde quietus. Item declinat appellum,  
 apposita exceptione & pbata, q quis alium appellaverit  
 p odium & atiam & sic non jacet appellum. Item  
 non jacet appellum inter dominum & tenentē suum,  
 qui ei fecit homagium suū, durante obligatione homagii  
 nec è contra. Item nec inter dominum & servū suum,  
 nisi appellaverit eum de feloniam & seditione facta dño  
 regi, in quo casu quilibet de populo audiri debet ap-  
 pellans, tam servus quā alius, & sine plegiorum datione,  
 nisi appellans traditor sit manifestus, & convict<sup>9</sup> ut  
 felo, qui verò fidelem vocem non habebit, sicut de  
 Ricardo Neale & Radulpho de Gray, vicario de Gaine,  
 & Wilhelmo filio Heliæ. Itē cadit appellū coram jus-  
 titiariis, ubi nullum fuit appellum in cōm, nec secta  
 fuit facta āte iter justitiariorum, vel si appellans nun-  
 quam fuit prosecutus, & hoc verum est, nisi recens  
 fuerit factum & infra iter justitiariorum evenerit. Itē  
 cadit appellum, ubi appellans non loquitur de visu &  
 auditu, quamvis locut<sup>9</sup> fuerit in cōm & hoc p cōm  
 testatū fuerit, ut de itinere M. de Pateshul in cōm  
 Wigorne anno regis Hen. quinto. Item cadit appel-  
 lum, si erratū fuerit in nominibus appellatorum, vel  
 cognominibus, ut si modò vocaverit unum Wilhelmum,  
 & postea eundem Robertum. Item si variatum fuerit  
 in modo appelli qualitercunq, ut si modò appellaverit  
 unum de facto, & modò de forciam eundem, vel è con-

Hertford, concerning Henry Romband, indicted for homicide, and which was concealed during the eyre, so that no mention was made thereof, and in the second eyre the indictment was to be revived, and upon that exception having been made, H. went away acquitted. Likewise an appeal is declined, upon an exception being propounded and proved, that some one has appealed another through hatred and spite, and so an appeal does not lie. Likewise an appeal does not lie between the lord and his tenant, who has done him homage, during the obligation of the homage, nor the converse. Nor between a lord and his serf, unless he has appealed him of felony and sedition against the lord the king, in which case any one of the people ought to be heard as an appellor, as well a serf as any one else, and without finding sureties, unless the appellor be a manifest traitor, and convicted as a felon, who indeed shall not have a trustworthy voice, as in the case of Richard Neale, and Randolph de Gray, vicar of Gaine, and William son of Hely. Likewise an appeal before the justices falls to the ground, where there has been no appeal in the county court, nor any suit instituted before the circuit of the justices, or if the appellor has never prosecuted, and this is true unless the act has been recent and it has happened within the circuit of the justices. Likewise an appeal falls to the ground, where the appellor does not speak upon eyesight or hearing, although he has spoken in the county court and has testified to it in the county court, as in the circuit of Martin de Pateshul in the county of Worcester in the fifth year of the reign of King Henry. Likewise an appeal falls to the ground, if there has been an error in the names or surnames of the parties appealed, as if he has some time back called one person William, and afterwards has called the same person Robert. Likewise, if there has been a variation in the mode of the appeal in any way, as if he shall have some time back appealed a person as a principal, and has afterwards appealed him

E E 2

trario. Itē cadit appellum, si appellans semel se retraxerit & iterum velit appellare, cū appellatus semel p̄ iudicium quietus recesserit, & hoc dico, quantum ad illum qui se retraxerit, licet teneat appellū quantum ad alios appellantes, qui appellaverint de eodem facto, si non per iudicium sed p̄ defaultam recessit appellatus quietus: defaulta enim non tollit appellum aliorum, iudicium tamen tollit imperpetuū, de eodem facto. Si autem diversa fuerint facta, iudicium contra unū appellantē de uno facto non tōlet appellum aliorū de diversis factis, nec defaulta. Et sic, qui p̄sens se retraxerit, ulterius non admittitur ad appellum. Idem erit si, cū p̄sens fuerit, nihil loquatur versus appellatum, sed si appellans ad diem suum non fuerit p̄secutus, sed defaultam fecerit, ut p̄dictum est, cadit breve, sed non cadit appellum, cum p̄ aliud breve resuscitari possit, nisi ita sit, q̄ iudicium subsequatur. Item cadit appellū propter crimen appellantis, ut si fuerit traditor manifestus, & de hoc convict⁹ p̄ confessionem, vel rationib⁹ manifestis. Item si latro cognoscens, vel seysitus de latrocinio vel utlagatus, qui suū secum portat iudicium. Item si accusator & appellans de feloniam & seditione facta dñō regi, & conscius criminis statim & sine mora hora congrua, cū possit, seditionē domino regi non manifestavit, nec suis ministris, cū statim sequi debeat & recenter antequam se divertat ad alia. Item cadit appellum, si non fiat mētio de pace domini regis, sed de pace justitiarum vel vic. Item nullum appellum, nisi fiat mentio de feloniam facta.

as an accessory, or the converse. Likewise an appeal falls to the ground, if the appellor has once retracted, and is desirous again to appeal, when the appellee has once gone away acquitted by a judgment, and this I say, as far as regards him who has retracted, although an appeal holds good, as regards other appellors, who have appealed concerning the same act, if the appellee has gone away acquitted not by a judgment, but through default; for default does not estop the appeal of others, but a judgment estops for ever proceedings for the same act. But if there have been different acts, a judgment against one appellor concerning one act will not estop the appeal of others concerning different acts, nor will his default do so, and so he, who being present has retracted, is no further admitted to make an appeal. The same thing results if, when he is present, he shall say nothing against the appellee, but if the appellor on his own day has not prosecuted, but has made default, as aforesaid, the writ falls to the ground, but the appeal does not fall to the ground, since it may be revived by another writ, unless it so be that a judgment follows. Likewise an appeal falls to the ground on account of the crime of the appellor, as if he should be a manifest traitor, and has been convicted of this through his confession, or on manifest grounds. Likewise if he be a confessed highwayman or be in seisine of the thing robbed on the highway, or be outlawed, who carries with him his own sentence. Likewise if the accuser and appellor in a case of felony or of sedition against the lord the king, and being privy to the crime, has not manifested to the lord the king nor to his ministers the sedition forthwith and without delay at a suitable hour, when he could have done so, since he ought to pursue him forthwith and before he turns aside to other things. Likewise an appeal falls to the ground, if no mention is made of the peace of the king, but of the peace of the justice or of the viscount. Likewise an appeal is null, unless mention

f. 141 b. Item cadit appellum, si appellans nihil loquatur de visu & auditu,<sup>1</sup> ut de ĩmino S. H. anno regis H. septimo in coñ Norf. de Durādo scissore<sup>2</sup> & Henrico de Ver.<sup>3</sup> Item datur exceptio appellato. Itē oritur exceptio ex psona appellantis ut si clericus sit qui appellet, ordinatus vel homo religiosus vel regularis, quia tales relinquunt seculum, & quæ seculi sunt. Itē quia latro cognoscēs, de quo supradict' est, qui vocem non habet versus hominem fidelē. Item si quis de rebus alterius q ppriis, nisi causa adjecta ut suprā. Itē si de morte alterius, vel plaga q suorum vel aliorū, nisi sua intersit certa ratione. Item differtur appellum ad tēpus p minori ætate, sive minor appellans sit sive appellatus.

## CAP. XXI.

1.  
De duelli  
vadiatione.  
Cum nulla  
sit excep-  
tio, tunc  
statim va-  
diatur  
duellum.

Cum autē appellat<sup>o</sup> nullā ab initio pposuerit excep-  
tionē, vel cū exceptionē pposuerit, nullā habeat com-  
petentē, qua se tueri possit, tunc statim vadietur  
duellū inġ eos, & defensor primò det vadiū defendendi,  
& postea appellator det vadiū disrationādi, & postmodū  
defensor primò juret p verba negativa negādo ꝑcise  
feloniā ei impositā, & postea jurabit appellator p verba  
affirmativa, affirmādo oīa esse vera quæ appellato im-  
ponit, & est ratio assignata infrā de civilib actionib<sup>o</sup>  
de duello vadiando<sup>4</sup> p terra.<sup>5</sup> Forma verò sacramti  
hæc est.

<sup>1</sup> "de visu et auditu" abolished  
by Stat. Westminst. i. c. 41, as  
leading to perjury.

<sup>2</sup> "tissore," MS. Rawl. C. 160.

<sup>3</sup> "de Veer," MS. Rawl. id.

<sup>4</sup> "vadiendo," MS. Rawl. id.

<sup>5</sup> "pro terra." Britton, l. i., ch.  
xxiii. § 14. has a similar reference

to a treatise on battle in a plea of  
land. Bracton has either omitted  
to treat of battle in civil actions for  
land, or the treatise has not come  
down to us. Cf. l. v. c. 13. De War-  
rantia, § 1. The same observation  
applies to the concluding words of  
ch. xxv. of this book.

is made of a felonious act. Likewise an appeal falls to the ground, if the appellor cannot speak from eyesight or hearing, as in the term of St. Hilary in the seventh year of king Henry, in the county of Norfolk, respecting Durandus the tailor, and Henry de Ver. Likewise an exception is granted to the appellee. Likewise an exception arises from the person of the appellor, as if he be a clerk who appeals, in holy orders or under religious vows or a regular, because such persons have renounced the world and the things of the world. Likewise because he is a confessed highwayman, as aforesaid, who has no voice trustworthy towards men. Likewise if a person appeals concerning things other than his own, unless the cause is added, as above said. Likewise concerning the death of another or the wounds of others than his own relatives, unless his own interest is concerned in some way. Likewise an appeal is put off for a time on account of minority, if the appellor or the appellee should be a minor. f. 141 b.

## CHAPTER XXI.

But when the appellee has from the commencement propounded no exception, or when he has propounded an exception, and he has brought forward none adequate to defend himself, then let battle be forthwith waged between, and let the defendant first give wager to defend himself, and next let the appellor give wager to derayne, and afterwards let the defendant first swear by negative words denying precisely the felony imputed to him, and next the appellor shall swear by affirmative words, affirming that all the things are true which he imputes to the defendant, and the reason is assigned below in treating of civil actions, concerning wager of battle for land. The form indeed of the oath is this. 1. Concerning the wager of battle, when there is no exception, let battle be forthwith waged.

2.  
De formā  
sacra-  
menti.  
Britton, l. i.  
ch. xxiii.  
§ 12.

Hæc audis homo, quē p manū teneo, qui te facis appellari A. p nomē baptisterii, q ego patrē tuū vel fratrē vel alium talē non occidi, nec plagā ei feci tali genere armorū, p q remotior esse debeat à vita, & mortī ppinquior, nec tu hoc vidisti, sic me De<sup>o</sup> adjuvet & hæc sancta. Et fiat mētio in sacramto de anno, die & loco secund formā appelli, & postea juret appellator cōtra, p hæc verba. Hoc audis homo, quē p manū teneo, qui te facis appellari B. p nomē baptist. q tu est pjur<sup>o</sup> & ideò perjur<sup>o</sup>, quia tali añ, tali die, tali hora, tali loco, nequiter & in fei occidisti C. patrē, filiū, fraī vel aliū parentē vel dñm suū, vel aliī, nequiter & in fei & in assultu pmed fecisti tali unā plagā, tali loco, tali genere armor, de qua obiit infra triduum, & ego hoc vidi,<sup>1</sup> sic me De<sup>o</sup> adjuvet & hæc sancta. Et sic fiet semp sacramtum secund formā appelli, & ita observetur in quolibet genere sacramti ubicunq, pstand est sacramtum ex utraq, parte.

3.  
Facto sa-  
cramento  
ex utraque  
parte, com-  
mittatur  
defensor  
duobus  
militibus.

f. 142.

Facto siquidē sacramto in hac forma, statim cōmittatur defensor duob<sup>o</sup> milit vel legalibus hominibus aliis, secund quod appellatus nobilis fuerit persona vel ignobilis, & p eos ducatur in cāpum ad duellum faciend deputat, & appellans eodē modo, & ita debet appellat<sup>o</sup> & appellans à pdictis custodiri, q nemo post sacramtum fact' cum illis habeat colloquium ante duelli peussionem, excepto eo, q cū in campum venerit jurare debent corā justitiar secundū formam istam.

<sup>1</sup> "ego hoc vidi." These words do not occur in the form of oath in Britton, l. i. ch. xxiii. § 12, having

been abolished by Stat. of Westminster i. c. 41. (A.D. 1275.)



Thou hearest this, thou man, whom I hold by the hand, who makest thyself to be called A. by thy name of baptism, that I have not slain thy father or brother or any other such person, nor have I caused him a wound by such kind of arms, through which he became more remote from life and nearer to death, nor hast thou seen this, so help me God and these holy things. And let mention be made in the oath of the year, the day, and the place according to the form of the appeal, and next let the appellor swear the contrary in these words: Thou hearest this, thou man, whom I hold by the hand, who makest thyself to be called B. by thy name of baptism, that thou art perjured, and on this account perjured because in such a year, on such a day, at such an hour, in such a place thou hast wickedly and feloniously slain C. his father, son, brother, or other his relation, or his lord ; or otherwise, wickedly and feloniously and with premeditated assault caused such an one a wound at such a place, with such kind of arms, from which he died within the third day, and I have seen this, so may God help me, and these holy things. And in this manner shall an oath always be made according to the form of the appeal, and it shall be thus observed in every kind of oath, wherever an oath has to be taken by both parties.

Upon the oath having been thus taken in this form, let the defendant be forthwith committed to the charge of two knights or other loyal men, according as the person appealed is a noble or ignoble person, and let him be conducted by them to the field appointed for the battle to be held in, and the appellor in like manner, and so the appellee and the appellor ought to be kept in charge by the aforesaid persons, that no one after the oath has been taken should have any conversation with them before the battle is commenced, excepting this, that when they have come into the field, they ought to swear before the justices after this form.

2.  
Concern-  
ing the  
form of  
the oath.

3.  
On the  
oath having  
been taken  
by both  
parties, let  
the defend-  
ant be  
committed  
to the  
charge  
of two  
knights.  
f. 142.

4.  
De sacra-  
mento  
faciendo  
in campo.  
Britton,  
*ib.* § 13.

Hoc audite justitiar, q ego non comedi nec bibi nec aliquis p me nec p me, ppter q lex Dei deprimi debeat, & lex diaboli exaltari, sic me Deus adjuvet.

5.  
De bauno  
domini  
regis.

Et facto tali modo sacrañto, statim fiat bann<sup>o</sup> regis sub voce pconia, & facto silentio p hæc verba. Præceptū reg. & justit<sup>er</sup> est, q nullus sit ita ausus vel audax, q quicquid audiat vel videat se moveat, vel verbis pferat, & si quis cont<sup>ra</sup> hoc fecerit, captus erit & posit<sup>us</sup> in prisonam, & ibi jacebit p annum & diē, usq, dñs rex de eo pceperit voluntatem suam, iis igitur taliter peractis, congregiantur campioni, & pugnent. Et si appellans vict<sup>us</sup> fuerit, vel si appellans se defenderit cont<sup>ra</sup> ipsum tota die, usq, ad horam qua stellæ incipiunt apparere, tunc recedet appellat<sup>us</sup> quiet<sup>us</sup> de appello, ex quo se obligavit appellans ad convincendum eum una hora diei, q quidem non fecit, & non solū quietus dimittitur appellatus de facto, imò omnes alii qui appellati sunt de forcia & pcepto, nec appellatus de facto solummodò quietus recedet versus ipsum primū appellatē, verūm etiā versus omnes appellantes qui ipsum appellaverunt de eodem facto, secus si de diversis.

6.  
Si appel-  
latus  
victus  
fuerit.

Si autem appellat<sup>us</sup> victus fuerit, ultimo supplicio punietur, cū poena gravi vel graviori, secundū criminis qualitatem, cum exhæredatione hæredum suorum & omnium bonor<sup>um</sup> amissione, secundū q supradictum est de utlagatis. Si autem plures unum appellaverint, vel plures de diversis plagis & factis, si appellatus se defenderit versus unum, pcedant alii appellantes versus

Hear this, ye justices, that I have not eaten nor drunken, nor any one for me or through me, wherefore the law of God should be abased and the law of the devil exalted, so God me help.

4.  
Of the  
oath to  
be taken  
in the  
field.

And the oath having been taken in this form, let the king's proclamation be made by the crier's voice, and silence having been made, in these words. It is the order of the king and of the justices, that no one shall be so daring and bold as to move himself or to utter a word, whatever he may hear or see, and if any body acts to the contrary of this, he shall be seized and placed in prison, and shall lie there for a year and a day, until the king himself shall announce his pleasure respecting him; these things therefore having been thus performed, let the champions meet and let them fight. And if the appellor be vanquished, or if the appellee has defended himself against him the whole day, until the hour when the stars begin to appear, then the appellee shall go away acquitted of the appeal, since the appellor has bound himself to convict him in some hour of the day, which he has not done, and not only is the person appealed as a principal actor acquitted, but all the others who have been appealed as accessories by force or by counsel, and the person appealed as a principal retires not only acquitted as regards the first appellor, but also as regards all appellors, who have appealed him for the same act, otherwise, if for different acts.

5.  
The procla-  
mation of  
the king.

But if the appellee has been vanquished, he shall be punished with the last punishment, together with a heavy or heavier penalty, according to the quality of the crime, with the disinherison of his heirs and the loss of all his goods, according as has been said above concerning outlawed persons. But if several persons have appealed one person, or several concerning different wounds and acts, if the appellee has defended himself against one, let the other appellors step forth against the

6.  
If the  
appellee  
has been  
conquered.

eundē modo suprad quousq omnes de facto convicti fuerint, & tunc deinde pcedatur contra ipsos de forcia & pcepto de eodem facto, quia factum & pceptum ita connexa sunt, q separari non possunt.

7.  
Si appellans in campo se retraxerit.

Si autē appellās in cāpo se retraxerit, mittatur gaolāe, & ipse & plegii sui de psequendo, quos in ipsa vadiatione duelli invenit, erunt in misericordia, quia appellās nō disrationavit, secund q se ad hoc obligavit. Si autem vict<sup>9</sup> sit in cāpo, aliud erit: quia non stat p ipsum quin fiat disrationatio, & quāvis ad gaolā mittend<sup>9</sup> sit, tamen fit ei aliquādo gratia de misericordia, quia pugnat p pace.

8.  
Cum omnes de facto convicti fuerint, tunc procedatur contra eos de forcia, et de sacramento ab appellato faciendo.

Cūm autem omnes de facto convicti fuerint, tunc demūm procedatur contra eos<sup>1</sup> de forcia & pcepto, & loquatur contra primū p verba superi<sup>9</sup> opposita,<sup>2</sup> defendendo oīa quæ ei imponuntur ab appellāte, p verba negativa ut suprā, scilicet q tali die, tali anno, tali hora, tali loco nō venit cum tali, qui appellat<sup>9</sup> est & convictus de facto, nec ipsum talē tenuit, nec ligavit, nec aliam forciam ei intulit, dum pdictus talis eum occidit vel plagavit, per quod mortuus fuit, sic eum Deus adjuvet, &c.

9.  
De sacramento faciendo ab appellante.

Et appellans juret in contrarium per verba affirmativa, & eodem die, quo ille de facto convictus fuerit, si ille de forcia tunc præsens fuerit, vadietur duellum, sed detur alius dies ad pereutiendum, quo die uterque veniet armatus, nisi fortē ipse appellatus de forcia aliquam pro se habeat exceptionem, per quam declinare possit appellum, & pcusso inter eos duello, si appellatus victus fuerit eandem poenam sustineat, quam sustinuit ille de facto. Dicitur enī vulgariter, quòd satis

<sup>1</sup> "ipsos," MS. Rawl. C. 160.

| <sup>2</sup> "exposita," MS. Rawl. C. 160.

same person in the manner aforesaid, until all the principals have been convicted, and then let proceedings be commenced against the accessories by force or by counsel to the same act, because the act and the counsel are so connected that they cannot be separated.

But if the appellor has retracted on the field, let him be sent to gaol, and both himself and his sureties for the prosecution, whom he produced at the very wager of battle, shall be amerced, because the appellor has not deraigned according as he obliged himself. But if he be vanquished in the field, it will be different; because it does not arise from his fault, that there is no deraignment, and although he is to be sent to gaol, nevertheless grace is sometimes shown to him through pity, because he fights in defence of the peace.

7.  
If the  
appellor  
has re-  
tracted on  
the field.

But when all the principals have been convicted, then let proceedings commence against the accessories by force or by counsel, and let the first speak in the words above opposed, defending himself against everything imputed to him by the appellor, by words of denial as above, to wit, that on such a day and in such a year, at such an hour, in such a place he did come with the said person, who has been appealed and convicted of the act, nor did he hold the said person or bind him, or use any force against him, whilst the aforesaid person killed him, or wounded him, whereby he died, so God him help &c.

8.  
When all  
the princi-  
pals have  
been con-  
victed, then  
let pro-  
ceedings  
commence  
against the  
accessories  
by force or  
by counsel.

And let the appellor swear to the contrary in affirmative words, and on the same day on which the principal has been convicted, if the accessory be then present, let battle be waged, but let another day be granted for commencing it, on which day each shall come armed, unless by chance the appellee as accessory has some exception to allege on his behalf, wherefore he may decline the appeal, and after battle is commenced between them, if the appellee should be vanquished, let him suffer the same punishment, as the principal has suffered? For it is a

9.  
Of the  
oath to be  
taken by  
the appel-  
lor.

occidit qui præcipit, vel qui malo animo tenet dum quis occiditur, & ad paria judicantur in utroq; delicto, quantum ad poenam.

10.  
Si appellans de facto victus fuerit, vel se retraxerit, illi de forcía liberantur.

f. 142 b.

Si verò legitimè se defenderit, ut p̃dict' est, dum tamē appellans victus non fuerit, p hoc alii de forcía non liberātur, quia diversa possunt esse facta & diversæ psonæ & diversæ causæ, & ita diversa appella, ut si un⁹ p̃cipiat & alius teneat, terti⁹ pcutiat, & quartus latronib⁹ p̃beat ingressum, & quintus in insidiis ne quis superveniat, in oībus istis casib⁹ tenetur quilibet eorū de facto suo pprio respōdere. Itē si cū illi de facto cōvicti fuerint, ille de forcía appellari poterit p hæc verba, p patrē vel fratrē, vel alium parētē interfecti, s. A. appellat B. q idem B. fuit consentiens morti talis, & in auxilio, & q ille qui convict⁹ est de facto exivit de domo talis appellati ad factū illud faciēd, & ibidē post factū rediit, & q ipse A. p̃sens fuit in cōm, ubi p̃d B. minat⁹ fuit eidē fratri suo, & ita in eod cōm q petita fuit ab eo pax dñi regis, & postea in cuṛ regis ei data, & q ita nequiter, offert &c. & p hæc verba cōsiderand fuit, q duellum esset inter eos, ut de termino P. anno regis H. nono in cōm Essex de Hugone de Godingham & Hugone de Cātīlupo de morte Johañ de Godingham.

11.  
Si primo appellans de facto mortuus fuerit vel defaultam

Si autem ille qui primò appellaverit de facto, mortuus fuerit, vel defaultā fecerit, vel p̃sens se retraxerit, vel cū sequi velit, appellat⁹ p exceptionem appellum declinaverit, nihilomin⁹ tamen subesse poterit feloniam, quæ si non convincatur, ita remanebūt maleficia im-

common saying that he is as good as a murderer who counsels the murder, or who with malice holds a person whilst he is murdered, and let them be judged alike for either crime as regards the punishment.

But if he has lawfully defended himself, as aforesaid, provided the appellor has not been vanquished, on that account the accessories are not liberated, because there may be different acts, and different persons, and different causes, and so different appeals, as if one should direct, another hold, a third strike, and a fourth give entrance to the highwaymen, and a fifth lie in ambush lest anybody should surprise them, in all of these cases each of them is bound to answer for his own acts. Likewise when the principals have been convicted, the accessory may be appealed in these words by a father or a brother or another relative of the person slain, to wit, A. appeals B. that B. was consenting to the death of such an one, and assisted at it, and that he who has been convicted of the act went forth from the house of so-and-so the appellee to do that act, and returned thither after the act was done, and that A. himself was present in the county court where the aforesaid B. threatened his brother, and so in the same county court the peace of our lord the king was claimed, and afterwards was granted to him in the court of the king, and so wickedly &c. he offers &c.; and by these words it was held that a duel should take place between them, as in Easter term in the ninth year of the reign of king Henry, in the county of Essex, respecting Hugh de Godingham and Hugh de Cantilupe, concerning the death of John de Godingham.

If he, who has in the first place appealed a principal, has died or made default, or being present has retracted, or when he has wished to prosecute, the appellee has by an exception avoided the appeal, nevertheless there may still be in substance a felony, which if it be not convicted so evil deeds will remain unpunished, which ought not

10.  
If the ap-  
pellor  
against a  
principal  
has been  
vanquished  
or has  
retracted,  
the appel-  
lees, as ac-  
cessories,  
are liber-  
ated.

11.  
If in the  
first place  
the appel-  
lor against  
a principal  
has died  
or made  
default,

fecerit,  
dominus  
rex potest  
procedere  
ex officio.  
Britton, ch.  
xxiii. § 2.

punita, q. esse non debet. Et quoniā non solum injuriatur ei qui occiditur, immo dño regi, cuj<sup>9</sup> pax infringitur: & quia adhuc subesse possit felonía, quāvis appellatus appellum declinaverit, nec adhuc defensus erit de felonía, sed semper stabit p̃sumptio ppter appellum, donec p̃betur contrarium, nec remanere debent maleficia impunita. Procedat igitur rex ex officio suo, & p pace sua, ad inquisitionem ppter p̃sumptionem appelli, ac si appellat<sup>9</sup> sine appello esset legitimè indictatus, & q ad regem pertinet accusatio & secta p pace sua. Videtur etiā q appellat<sup>9</sup> non solum tenetur appellanti, imò dño regi, sicut videri poterit p verba appelli, ut si dicat, talis appellat talē, q nequiter & in felonía contra pacem dñi regis, &c. p q videri poterit manifestè q appellatus non solum tenetur appellanti, imò dño regi. Et quo casu, cū se defendere obtulerit p corpus, non audietur, quia rex non pugnat, nec alium habet campionē q patriā, nec si esset qui diceret q pugnare deberet, duellum caderet, ex quo sectā non fecit, nec loqui potest de visu nec auditu. Recurrendum est igitur ad patriā, ut videtur, q quidē si inculpatus recusaverit, videtur quòd sit indefensus, & p hoc quasi convictus, & quòd cogendus sit ut p patriam se defendat p defectum alterius p̃bationis, ut si fœmina appellū fecerit de morte viri sui, non tenetur duellum facere ppter sexum. Cogendus est igitur appellat<sup>9</sup> quòd se defendat p patriam, quia cadit duellū ppter sexum fœmineum, & ita fit in appello de raptu virginū, ut de itinere ultimo M. de Pateshul in cōm



to be. And since not only an injury is done to him, <sup>the king</sup> who is slain, but also to the king himself, whose peace is <sup>himself</sup> broken, and because there may still be the substance of <sup>may pro-</sup> felony, although the appellee has avoided the appeal, and <sup>ceed of</sup> has not been as yet defended of the felony, but the presumption shall still stand on account of the appeal, until the contrary shall be proved, nor ought misdeeds to remain unpunished. Let the king therefore proceed of his office and for his peace, to an inquisition on account of the presumption of the appeal, as if the appellee without any appeal had been lawfully indicted, and because there appertains to the king an accusation and a suit on behalf of his peace. It seems also that the appellee is not merely bound to the appellor, but also to the lord the king, as may be seen from the words of the appeal, as if it should be said, Such an one appeals such an one, that wickedly and feloniously against the peace of the king &c., by which it can be seen manifestly that the appellee is not merely bound to the appellor, but to the king himself. And in which case when he has offered to defend himself by his body, he shall not be heard, because the king does not fight, nor has he any champion but the country, nor if there should be any one to say that he ought to fight, would battle ensue, since he has not made a suit, nor can he speak from sight or hearing. Recourse must therefore be had to the country, as it seems, which indeed if the person accused has refused, it seems that he is without any defence, and through this as it were convicted, and that he is to be compelled to defend himself through the country on account of the defect of any other proof, as if a woman has appealed on account of the death of her husband, she is not obliged to do battle on account of her sex. The appellee is therefore to be compelled to defend himself by the country, because battle fails on account of the feminine sex, and so it is in a case of ravishment of virgins. As in the last eyre of Martin de Pateshul in the county of Lincoln in the tenth

Linc. anno regis H. decimo. Item placito coronæ<sup>1</sup> de Gilberto filio Aldrendi & Alani Swadi<sup>2</sup> qui transit ætatē.

12.  
Item defenditur  
quis ab  
appello  
propter  
mahemium,  
et quia  
transit  
ætatem.

f. 143.

Item defendit se quis de necessitate p patriam, ppter defectum corporis appellantis, s. ppter mahemium. Item propter ætatem, ut si appellatus ætatem transierit, ut sexaginta annorum, sed tamen ibi habet electionem, utrum se defendere velit p corpus vel patriam. Igitur in iis casibus ut videtur, tenetur quis se defendere p patriā, tum propter regiam dignitatem & pcedentē p̄sumptionē, tum ppter sexum appellantis, tum ppter mahemiū, tum ppter ætatem. Sed cūm dñs rex sectam faciat p pace sua de appellato, qui præsens fuerit, & ipse p inquisitionem, in quā se posuerit gratis vel invitus, damnand⁹ & culpabilis inveniā, videndū qua pœna puniri debeat, cūm sint qui dicant q pœna pecuniaria, quidam q ultimo supplicio.

13.  
Si mulier  
per vim  
oppressa.

Et si mulier per vim oppressa pucilagiū suum amiserit, & cūm de appello suo ceciderit, appellatus se posuerit super patriā, p quā culpabilis esse inveniatur, condemnabitur, ac si appellū pcessisset: ut de termino Sancti M. anno reg. H. sexto incipiente septimo.

## CAP. XXII.

1.  
De indicta-  
tis per  
famam  
patriæ ex  
suspitione.

Itē dictum est suprā, ubi apparet accusator & sequiter & appellat, & de secta regis, cūm ceciderit appellū. Nunc autē dicendū est de indictatis p famā patriæ, quæ p̄sumptionē inducit, & cui standū est, donec indic-

<sup>1</sup> "Inter placita coronæ." MS.  
Rawl. C. 160.

<sup>2</sup> "de filio Adelarde et Alanum  
"Swady." MS. Rawl. C. 160.

year of king Henry. Likewise in a plea of the crown concerning Gilbert the son of Aldrendus, and Alan Swade who had passed the age.

Likewise a person of necessity defends himself by the country, on account of a defect in the person of the appellor, as on account of mayhem. Likewise on account of age, as if the appellee has passed the age, for instance of sixty years, but nevertheless he has an option, whether he will defend himself by battle or by the country. Therefore in such cases, as it seems, a person is bound to defend himself by the country, as well on account of the regal dignity and the preceding presumption, as on account of the sex of the appellor, as well on account of mayhem, as well on account of age. But when the king institutes a suit on account of his peace against the appellee who is present, and the latter is found by the inquisition, upon which he has placed himself gratuitously or unwillingly, to be condemnable and culpable, it is to be seen with what punishment he ought to be punished, since there are some, who say that he should be punished with a pecuniary penalty, and others say with the most extreme penalty.

12. Likewise a person is defended from an appeal on account of being maimed, or because he has passed the age. f. 143.

And if a woman ravished by force has lost her maidenhood, and the appellee, when he has fallen from his appeal, has placed himself upon the country, by which he is found guilty, he shall be condemned, as if the appeal had proceeded, as in the term of St. Michael in the sixth and seventh years of king Henry.

13. If a woman has been ravished by force.

## CHAPTER XXII.

It has been above discussed where an accuser appears, and both sues and appeals, and concerning the suit of the king, when the appeal has fallen through. Now we must speak of persons indicted upon common fame, which raises a presumption, and by which we must hold, until

1. Of persons indicted upon common fame on suspicion.

tat<sup>9</sup> se à tali suspitione purgaverit. Ex fama quidē oritur suspitio, & ex fama & suspitione gravis præsumptio, tamē pbatōnē admittit in contrariū, sive purgationē. Suspitio quidē multiplex esse poterit. In primis, si fama oriatur apud bonos & graves. Item ex facto pcedit oritur suspitio, cui etiā standū est, donec pbetur contrariū: ut si quis appellatus fuerit à probatore, & fugerit ppter appellū, & mortuo pbatore redierit. Itē si quis de morte hominis, vel alia felonia appellat<sup>9</sup> fuerit, & p̄sens appellū declinaverit, nihilo-min<sup>9</sup> suspectus habetur, quia felonia subesse poterit, de qua appellat<sup>9</sup> se nondū purgavit, & unde standū est suspitioni, donec se purgaverit. Sunt etiam aliæ præsumptiones, de quib<sup>9</sup> dictum est suprā in parte, quæ pbatōnem non admittunt in cōtrariū nec defensionē, ut si quis cum cultello sanguinolento captus fuerit super mortuū, vel à mortuo fugiendo, vel mortem cognoverit coram aliquibus, qui recordū habent, & hī tales, etiam si accusator non apparuerit, mortem dedicere non poterunt. Sed cū fama suspitionē inducat, vident<sup>9</sup> erit, quæ & qualiter esse debeat talis fama, & unde oriatur. Et sciēd<sup>9</sup> q fama, quæ suspitionē inducit, oriri debet apud bonos & graves, non quidem à malevolis & maledicis, sed pvidis & fide dignis psonis, non semel sed sæpius, q clamor innuit & diffamatio manifestat, tumult<sup>9</sup> enī fit & clamor populi quandoq de plurib<sup>9</sup>, quæ in veritate non fundantur, & idēd<sup>9</sup> vanæ voces populi nō sunt audiendæ.

2.  
Qualiter  
justiciarius

Justic. igitur si discret<sup>9</sup> sit, (cū ppter famā & suspitionē p patriā debeat veritas inquire, si indictat<sup>9</sup> de

the person indicted has purged himself from the said suspicion. From fame indeed suspicion arises, and from fame and suspicion a grave presumption, nevertheless it admits of proof to the contrary or of purgation. Suspicion indeed may be manifold. In the first place, if fame arises amongst the good and the grave. Likewise suspicion arises from a fact preceding, by which we must hold, until the contrary is proved, as if any one has been appealed by an informer, and has fled on account of the appeal, and upon the death of the informer has returned. Likewise if any one has been appealed concerning homicide or another felony, and being present has avoided the appeal, nevertheless he is held to be suspected, because there may be in substance a felony, concerning which having been appealed he has not yet purged himself, and wherefore we must hold to the suspicion, until it is purged. There are likewise other presumptions, concerning which we have spoken above in part, which do not admit of proof to the contrary nor of defence, as if a person has been captured with a bloodstained knife upon a dead man, or in running away from a dead man, or has confessed the death before certain persons, who keep a record, and such kind of persons cannot gainsay the death, even if an accuser should not appear. But when fame brings on suspicion, we must examine what and what kind of fame it ought to be, and whence it arises. And it is to be known that fame, which gives rise to suspicion, is a fame amongst good and grave persons, not originated by malevolent and slanderous persons, but by provident and trustworthy persons, not once but repeatedly, which clamour intimates and dissemination manifests, for there is sometimes a tumult and a clamour of the public concerning several things, which are not founded on truth, and therefore the vain voices of the public are not to be heard.

The justice, therefore, if he be discreet, (since on  
account of public fame and suspicion the truth ought to

2.  
How the  
justiciary

debeat ex-  
aminare.

f. 143 b.

crimine ei imposito culpabilis sit vel nō) inprimis debet inquirere, si fortè dubitaverit, & jurata suspecta fuerit, à quo vel à quibus illi duodecē didicerunt ea, quæ in veredicto suo pferūt de indictato, & audita super hoc eorū respōsione, de facili perpēdere poterit, si dolus subfuerit, vel iniquitas. Dicet fortè aliquis vel major pars juratorum, q̄ ea quæ ipsi pferunt in veredicto suo didicerūt ab uno ex conjuratorib<sup>9</sup> suis, & qui interrogat<sup>9</sup> fortè dicet q̄ illa didicit ab illo tali, & sic descendere poterit interrogatio & responsio de psona in psonam usq̄ ad aliquam vilem & abjectam psonam, & talem cui non erit fides aliquaten<sup>9</sup> adhibenda. Et ita inquirat justit̄ in hujusmodi q̄ gloria sua & laudis suæ titulus cumuletur, & maturè dicetur<sup>1</sup> Jesus crucifigitur & Barabas liberatur, p hujusmodi enim inquisitiones, si<sup>2</sup> diligenter & cautè factæ fuerint, multæ<sup>3</sup> inveniri poterunt inconvenientiæ. Et venit quidē quandoq̄ q̄ dñs tenentem suum indictat vel indictari facit & ei crimen imponi ob cupiditatē terræ suā habendi in dominico, vel vicinus vicino ppter odium & hujusmodi.

3.  
Quod  
omnes a  
jurata  
amovean-  
tur, quos  
appellatus  
sufficienti  
habet ra-  
tione sus-  
pectos.

Cū igitur procedendum sit de hujusmodi ad inquisitionem, ut ad judicium securi<sup>9</sup> pcedatur, & ut periculū & suspitio tollatur, justitiar̄ dicat indictato q̄, si aliquem ex duodecim juratoribus suspectū habeat, illum justa ratione amoveat. Et illud idem dicatur de vil-latis, ut si capitales inimicitie fuerint inter aliquos ipsorum & indictatum, vel si ob cupiditatem terræ habendæ, ut p̄dictum est, qui omnes amovendi sunt ex

<sup>1</sup> "mature dicetur." This is evidently an erroneous reading. MS. Rawl. C. 160. has "natura dicetur," which is also erroneous. Other MSS., such as Rawl. C. 159. and Godbolt, have "et non dicatur."

The more correct reading is probably "et minime dicetur."

<sup>2</sup> "si." Such is the general reading of the MSS., but "nisi" seems to be required by the context.

<sup>3</sup> "multæ" omitted, MS. Rawl. C. 160.

be inquired into by the country, whether the person indicted of a crime imputed to him is guilty or not,) ought first to inquire, if by chance he has any doubt and the jury is suspected, from whom singly or from whom generally those twelve persons have learnt those things, which in their verdict they set forth concerning the person indicted, and after hearing their answer on this question, he will be able easily to judge, whether there is any deceit or iniquity behindhand. Some one will probably say or the greater part of the jurats, that they have learnt those things which they set forth in their verdict from one of their associate jurats, and who upon interrogation will probably say that he heard them from such an one, and so the question and the answer may descend from person to person, until it arrives at some vile and abject person, and such an one that no faith is to be given to him. And so let the justice inquire in a matter of this kind, that his glory and the title of his praise may be accumulated, and it shall not be said, Jesus is crucified and Barabas liberated, for by inquisitions of this kind, if they be diligently and cautiously made, many inconveniences may be discovered. And it happens sometimes, that a lord indicts or causes to be indicted his tenant, and imputes a crime to him from a desire to have his land in his demesne, or a neighbour [does this] to a neighbour on account of hatred or such like feeling.

When therefore proceedings are to be had in the nature of an inquisition of this kind, in order that the proceeding to a judgment may be more safe, and that danger and suspicion may be removed, let the justice say to the person indicted that, if he has reason to suspect any one of the twelve jurors, he may remove him for just grounds. And let the same thing be said of the townspeople, that, if there have been any capital enmities between any of them and the person indicted, or if on account of covetousness to possess his land, as

ought to  
examine.

f. 143 b.

3.  
That all be  
removed  
from the  
jury, whom  
the ap-  
pellee has  
sufficient  
reason to  
suspect.

justa suspitione, ut inquisitio absq, omni suspitione pcedat. Præsentib<sup>9</sup> igitur xii. juratoribus, & quatuor villatis, inprimis jurabit quilibet de villata p se, vel õnes simul erectis sursum manib<sup>9</sup> singulorū in hæc verba.

4. Hoc auditis justitiiarii, q veritatē dicemus de iis, quæ à nobis requiretis ex parte dñi regis, & p nihilo omitem<sup>9</sup>, quin veritatem dicemus, sic nos Deus adjuvet, &c.

Quod villatæ jurabunt per se, vel omnes simul erectis manibus.

5. Et tunc unus ex justit̃ illis hñi verba pponat. Talis, qui hic p̃sens est, rectat<sup>9</sup> de morte talis, vel alio tali crimine, venit & defendit mortē & totū, & ponit se super linguas vestras de hoc de bono & malo, vel fortè dicet, de hoc & de aliis malefactis, si fortè de aliis suspectus habeatur, & multū refert, utrum se posuerit super eos taliter vel taliter, quia secundū hoc diversa sequitur condemnatio vel deliberatio, & ideò vobis dicim<sup>9</sup> in fide qua Deo tenemini, & p sacramentū q fecistis, nobis scire faciatis inde veritatem, nec omittatis timore, amore, vel odio, sed solum Deū præ oculis habentes, quin dicatis si culpabilis sit de hoc, quod ei imponitur, vel de aliis maleficiis vel non, & non incumberetis eum, si immunis sit vel innocens sit à delicto isto, & postea secundū eor̃ veredictum aut sequitur deliberatio vel condēnatio.

Verba, quæ a justitiiariis procedenda sunt post sacramentum factum.

6. Istā verò formā inquisitionis p patriā servabunt just. generaliter in omnib<sup>9</sup> inquisitionibus, quæ faciēdæ sunt p morte hominis, ubi quis se posuerit sup inquisitionem, sive sponte sive p cautelam induct<sup>9</sup>, sive p necessitatem, in oībus criminibus, majoribus & minoribus: possunt tamen justit̃, si viderint expedire, ex

Generalis observantia in sacramentis coram justitiiariis faciendis.



aforesaid, they are all to be removed upon just suspicion, so that the inquisition may be free from all suspicion. Twelve jurors therefore being present and four townspeople, each of the townspeople or all together, each holding up his hand, shall swear in these words.

Hear this, ye justices, that we will speak the truth concerning those things, which ye shall require from us on the part of the lord the king, and for nothing will we omit to speak the truth, so God us help &c.

4.  
That the townspeople shall swear singly, or all together with hands uplifted.

And then one of the justices shall propound words of this kind. So and so, who is here present accused of the death of such an one or of some other such crime, comes and defends the death and the whole matter, and puts himself upon your tongues concerning this matter for good or for evil, or he may perhaps say, concerning this and other misdeeds, if by chance he is suspected of other misdeeds, and it matters considerably, whether he has put himself upon them in this manner or in that manner, because there follows accordingly and differently his condemnation or delivery, and therefore we say to you on the faith in which you are bound to God, and in virtue of the oath, which you have taken, that you cause us to know the truth thereof, and omit not from fear, or love, or hatred, but having God only before your eyes, to declare to us, whether he is guilty of that which is imputed to him, or of other misdeeds, or not, and not to oppress him if he be free and innocent of that delict, and afterwards according to their verdict there follows either his delivery or condemnation.

5.  
The words, which are to proceed from the justiciaries, after the oath has been taken.

The justices shall indeed observe that form of inquisition by the country generally in all inquisitions, which are to be made concerning homicide, where a person has put himself upon the inquisition, either of his own free will, or induced by motives of caution, or by necessity, in all crimes, major or minor; the justices however, if they perceive it to be expedient, from a

6.  
A general observance in the oaths to be taken before the justiciaries.

causa necessaria, si grave crimē latens sit, & juratores fortē amore, odio, vel timore celare voluerunt veritatem, separare juratores ab invicem, & quemlibet p se, & separatim examinare, ad veritatem sufficienter declarandam.

f. 144.

## CAP. XXIII.

1. Dictum est suprā de appello de morte hominis facta nequiter & contra pacē, nunc autē dicendū est de pace & plagis factis contra pacē, fit autē appellū p hæc verba. A. appellat B. q quadā die tali, sicut fuit in pace dñi regis in tali loco, vel sicut ivit in pace dñi regis in chimino<sup>1</sup> dñi regis inter talē villā & talē, tali die, ante tale festū vel post tale festū, anno tali, tali hora, venit idē B. cum vi sua, & cont pacē dñi regis in felonia & assultu p̄meditato, fecit ei insultū, & quandā plagā ei fecit in tali loco, tali genere armorum, et q hoc fecit nequiter et in felonia, offert pbare versus eum p corp<sup>9</sup> suum sicut curia cōsiderat. Et B. venit et defendit pacē dñi regis infractā, in feloniā, et plagā, et quicquid est cont pacē dñi regis (et totum de verbo in verbum, quicquid ei imponitur, et secundū q ei imponitur) p corp<sup>9</sup> suum, secundū q curia regis consideravit. Et A. quæsitus si levavit clamorē & hutesiū, et quando venit ad cōm cum appello suo? dicit q statim levavit in facto illo et post factum et statim cum hutesio illo ivit ad villas p̄pinquiores, et ad servientes dñi regis et coronatores, et ad p̄ximum cōm fecit appellū suum, et vic. et coronatores testantur q secta illa sufficienter et rationabiliter facta fuit, et q

<sup>1</sup> "chymino," MS. Rawl. C. 160, a Latinised form of the Norman word "chemin."

necessary cause, if a serious crime is concealed, and the jurors from love, or hatred, or fear are desirous to conceal the truth, may separate the jurors from one another, and examine each one by himself and separately in order to clear up the truth sufficiently

## CHAPTER XXIII.

f. 144.

We have treated above of an appeal for homicide caused wickedly and against the peace, now indeed we must treat of a breach of the peace and of wounds inflicted against the peace, and the appeal is made in these words. A. appeals B. that on a certain day, as he was in the peace of the lord the king in such a place, or as he travelled in the peace of the lord the king on the highway of the lord the king between such a vill and such a vill, on such a day, before such a feast or after such a feast, in such a year, at such an hour, the said B. came with his force and against the peace of the king in felony and with a premeditated assault, made an attack upon him, and inflicted a certain wound upon him in such a place, with such kind of arms, and that he did this wickedly and in felony, he offers to prove against him by his body, as the court thinks fit. And B. comes and defends himself against having broken the peace of the king, and against the felony and the wound, and whatever is against the peace of the lord the king, (and the whole word for word, whatever is imputed to him and according to what is imputed to him,) by his body according as the court of the king has thought fit. And A having been questioned, if he had raised hue and cry, and at what time he came with his appeal to the county court? says that he forthwith raised hue and cry in the very act and after the act, and forthwith with the hue went to the nearest vill and to the king's serjeants and coroners, and made his appeal at the next ensuing county court, and the viscount and the coroners

1.  
Of an appeal for breach of the peace, and for wounds inflicted against the peace, and of the words of the appeal, and the mode of appealing, and of defending, and of the mode of defending, and of de-raigning.

plaga ostensa fuit ad cōm recens et aperta, et quia secta rationabiliter facta est, et B. nihil ostendit p q debet habere patriam, consideratū est q duellum sit inter eos. Et B. det vadiū defendendi, et A. det vadiū disrationandi, et uterq plegios inveniet, et dabitur eis dies, ad quē uterq veniet armatus, et ad quē diē poterit se uterq, essoñ,<sup>1</sup> vel eorū alter, ita q unicum habeat essoñ, et si appellans defaltam fecerit ad talē diem, vel p̄sens se retraxerit, appellat<sup>o</sup> quietus recedet, et appellans et plegii sui de psequendo in misericordia, si autem appellans venerit, et appellat<sup>o</sup> non, habeatur appellatus p indefenso. Si autem uterq, defaltā fecerit, et testatum sit q concordati fuerunt, uterq, capiatur, et ipsi et plegii sui in misericordia. Si autem p̄sentes fuerint, uterq, custodiatur. Cū autem vic. & coronatores testati fuerint contrariū, s. q secta non sit sufficienter facta, eò q nullum hutesium levatum sit, nec plaga ostensa recens & aperta, nec appellans venit cū appello suo nisi ad secundū cōm vel ad tertiū, cadit appellū. Et quia tunc subesse poterit feloniam, inquireret rex, si voluerit, p pace sua. Et cū ita fuerit quis appellat<sup>o</sup>, & secta fuerit bene facta, habebit defensor electionē, utrū se defendere velit p corp<sup>o</sup> vel p patriā. Et si aliquo istorum modorum se defenderit, omnes appellati de forciam vel p̄cepto quieti recedent. Si autem fuerit condemnat<sup>o</sup>, tunc statim pcedendum erit versus illos appellatos de forciam & p̄cepto.

2.  
De excep-  
tionibus  
contra hu-

Declinatur quandoq, appellum de pace & plagis p exceptiones generales, secundū quod superiūs dicitur de appello de morte hominis. Declinatur etiam p ex-

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<sup>1</sup> "essoniare," MS. Rawl. C. 159.

testify, that the suit was sufficiently and reasonably made, and B. shows no grounds why he ought to have the country, it was held that there should be battle between them. And let B. give his wager of defence, and A. his wager of deraignment, and let each find sureties, and a day shall be given to them, on which each shall come armed, and as regards which day both of them or either of them may have an essoin, so that there shall be a single essoin, and if the appellor makes default on that day, or being present retracts, the appellee shall go away acquitted, and the appellor and his sureties shall be amerced; but if the appellor has come and the appellee has not come, the appellee shall be held to be without defence. But if both of them should make default and it should be attested that they have settled the matter by agreement, let both be seized, and themselves and their sureties amerced. But if they be present, let both be given into custody. But when the viscount and the coroners have testified the contrary, to wit, that the suit has not been sufficiently made, inasmuch as no hue was raised, nor was any recent and open wound exhibited, nor did the appellor come with his appeal until the second or the third county court, the appeal falls to the ground. And because there may be in substance a felony, the king shall inquire, if he wishes, on behalf of his own peace. And when a person has been so appealed, and the suit has been well made, the defendant shall have an election, whether he will defend himself by his body, or by the country. And if he shall have defended himself by either of those means, all the appellees as accessories by force or by precept shall go away acquitted. But if he be condemned, then forthwith proceedings shall take place against the appellees as accessories by force or by precept.

An appeal for breach of the peace and for wounds is avoided sometimes by general exceptions, according as <sup>2.</sup> Of the exceptions has been said above in an appeal for homicide. It is also against an

jusmodi  
appellum.

f. 144 b.

ceptiones speciales, quia declinatur propter parvitatem plagæ, unde notandum est, quodd in appello de pace & plagis, designandum erit cujus longitudinis fuerit plaga, & cujus pfunditatis, & utrum ibi sit plaga, vel riffura, ad hoc quodd procedat duellum vel non procedat. Ut sciri possit per factum, utrum sit ibi injuria vel feloniam, & exinde quæ sequatur pœna, poterit enim alius ab eo qui injuriam passus est sequi appellum p eo, si ipse comòdè sequi non possit, ut si sit parentela conjunctus vel homagio. Poterit etiã sequi ad utlagādū appellatū, cūm fortè se subtraxerit, hoc tamē in appello apposito, q ille principalis sequeretur, si posset, & sequetur, si possit. Et unde p sectam talis poterit appellat<sup>9</sup> utlagari ppter impotentiam principalis. Sed si ante utlagationē convaluerit, statim debet sibi assumere sectā & appellum, quia alterius secta non valebit, nec erit extūc (si sequi voluerit) ad utlagationē pcedendū, cū ipse sit vivus & san<sup>9</sup>, ppter verba in principio appelli apposita p pcuratorem, q ipse principalis sequetur cūm possit. Item videndū quo loco corporis in plaga facta sit. Itē quibus armis, utrum molutis armis, ligno vel lapide, licèt ligna vel lapides sub armorū appellatione non contineantur. Arma verò moluta plagam faciunt, sicut gladius bisacuta & hujusmodi, ligna verò & lapides faciunt brusuras, orbes, & ictus, qui judicari non possunt ad plagam, ad hoc q inde pveniri possit ad duellum.

3.  
Item, quid  
dicetur de  
eo qui vi-

Sed quid dicitur, si quis alterius virilia absciderit, & illum libidinis<sup>1</sup> causa vel commercii castraverit, tenetur, sive hoc volens fecerit sive invitus, & sequitur

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<sup>1</sup> "cum libidinis." MSS. Rawl. C. 160 and 159.

avoided by special exceptions, because it is avoided by <sup>appeal of</sup> reason of the slightness of the wound, whence it is to <sup>this kind.</sup> be noted, than in an appeal for breach of the peace and for wounds, a description must be made of the length of the wound, and of the depth of the wound, and whether it be a wound or a graze, in order that battle be allowed or not. That it may be known from the act, whether it be an injury or a felony, and thereupon what penalty should follow, for a different person from him who has suffered an injury may sue an appeal for it, if the person himself cannot sue, as if he be connected by relationship or by homage. He may also sue for the f. 144 b. outlawry of the appellee, when he by chance has withdrawn himself, this however being added in the appeal, that the principal would sue him if he could, and he shall sue him, if he can. And hence a person may be outlawed at the suit of such an one, on account of the inability of the principal. But if he recovers his health before the outlawry, he ought forthwith to take upon himself the suit and the appeal, because the suit of another person will not avail, nor shall proceedings thereupon be taken to outlawry (if he wishes to sue) since he himself is alive and well, on account of the words inserted at the commencement of the appeal by the proxy, that the principal himself will sue, when he can. Likewise it is to be ascertained in what part of the body the wound has been made. Likewise with what arms, whether with sharpened arms, with wood or with stone, although wood and stone are not comprised under the term of arms. But sharpened arms make a cut, like a sword, two-edged and such like, but wood and stone make bruises, circles, and strokes, which cannot be adjudged to be a wound, such as to give rise to battle.

But what is said, if any one has cut off the private 3. parts of another, and has castrated him for the sake <sup>Likewise,</sup> either of lust or of commerce? He is liable, whether he <sup>what is to</sup> has done it willingly or unwillingly, and punishment <sup>be said of</sup> <sup>him who</sup> <sup>has cut off</sup>

relicta absce-  
dit alicu-  
jus.

pœna, aliquādo capitalis, aliquādo ppetuum exiliū cum omnium bonorū adēptione. Item si quis mulieris viscerib<sup>9</sup> vim intulerit, quò partum abegerit, tenetur. Item si quis furem nocturnū occiderit, ita demum impunè foret, si parcere ei sine periculo suo non potuit; si autem potuit, aliter erit. In manu enim<sup>1</sup> regis sunt vita & mors hominū, sicut coram rege apud Windsore de quodam homine de Cochā coram W. de Raleghe tunc justitiario, cui dñs rex in tali casu pdonavit mortem. Item erit si quis Hamsokne, quæ dicitur invasio dom<sup>9</sup>, contra pacem dñi regis in domo sua se defenderit, & invasor occisus fuerit, impersecutus & inult<sup>9</sup> remanebit,<sup>2</sup> si ille, quem invasit, aliter se defendere non potuit, dicitur enim q nō est dignus habere pacem, qui non vult observare eam. Item Judæis filios suos circumcidere licet, sed non alterius religionis hominem, q si fecerint, castrati pœna irrogatur.

## CAP. XXIV.

1. De appello  
de plagis  
et mahemio,  
et de modo ap-  
pellandi et  
defendendi.

Dictum est suprā de pace & plagis, nunc autem dicendum de plagis & mahemio. Verba autem appelli sunt hæc, A. appellat B. quòd cū esset in pace domini regis tali loco, tali die, tali hora, tali anno &c. ut suprā: venit idem B. cum vi sua & in felonia & assultu præmeditato &c. ut suprā, fecit ei quandam plagam in capite, vel in brachio, vel in alio loco corporis, ita quòd mahemiatus est. Et quòd hoc fecit nequiter & in felonia, offert disrationare versus eum, sicut homo mahemiatus, prout curia domini regis consideraverit. Et B. venit & defendit totum de verbo

<sup>1</sup> "in manu" down to "mortem"  
omitted, MS. Rawl. C. 159.

<sup>2</sup> "ipse solutus remanebit," MSS.  
Rawl. C. 160 and 159.



follows, either capital, or perpetual exile with forfeiture of all goods. Likewise if a person has employed force to the womb of a woman, in order to produce abortion, he is liable. Likewise if a person has killed a thief in the night, on this condition he shall have impunity, if he could not have spared him with safety to himself, but if he could have done so, it shall be otherwise. For the life and the death of a man are in the king's hand, as before the king at Windsor concerning a certain man of Cocham before William de Ralegh, at that time justiciary, when the lord the king in that case pardoned the death. Likewise if anybody in a case of Hamsoken, which is the invasion of a house against the peace of the king, defends himself in his own house, and the invader is killed, he shall remain unpersecuted and un-avenged, if he, whom he invaded, could not otherwise defend himself, for it is said that he is not worthy to enjoy peace, who is not willing to keep it. Likewise it is allowable to Jews to circumcise their sons, but not a man of another religion, which if they do, the penalty of castration is imposed upon them.

the private  
parts of  
another.

## CHAPTER XXIV.

We have spoken above of a breach of the peace and of wounds; we must now speak of wounds and of weapons. But the words of the appeal are these. A. appeals B. that when he was in the peace of the lord the king in such a place, on such a day, at such an hour, in such a year, &c. as above, the said B. came with force and feloniously and with a premeditated assault &c. as above, caused him a certain wound in the head or in the arm, or in another part of his body, so that he was maimed. And that he did this wickedly and feloniously, he offers to deraign against him in such manner as a man maimed can, according as the court of the lord the king thinks fit. And B. comes and defends the whole charge word

f. 145.

1.

Of an  
appeal for  
wounds  
and may-  
hem, and  
of the mode  
of appeal-  
ing and of  
defending.

in verbū &c. ut suprā. Et quo casu videndum erit à justitiariis, si ibi sit mahemium vel non. Si autem adjudicetur mahemium, tunc auferetur appellato electio defendēdi se per corpus, vel per patriam: quia in hoc casu, de necessitate arctabitur appellatus ad defendendum se p patriam. Aufertur etiam quandoq; patria propter convictionem appellati, ut si fortè factum cognoverit coram aliquib<sup>9</sup> qui habent recordum, sicut esse possit, si aliquis alium castraverit, & fortè cognoverit se esse seysitū de testiculis, factū ulterius dedicere nō poterit cōtra eorū recordū. Si autē mahemiū adjudicatū non fuerit, pcedatur cōtra appellatū, sicut superius de pace & plagis.

2.  
De excep-  
tionibus  
contra hu-  
jusmodi  
appellam.

Excipiūt quandoq; contra hujusmodi appellū p generales exceptiones, ut suprā, ut si appellans non fecerit sectā sufficientem, vel si nunquā fuit psecut<sup>9</sup> ante iter justitiariorum, vel si nullā plagā ostendit coronatorib<sup>9</sup>, vel non nisi rufflurā vel brusuram, orbes, ict<sup>9</sup> cum baculo & nonq; armō moluto. Itē ppter variationē, ut si primò appellaverit quis de pace dñi regis, & modò de pace vic. Item si primò de pace vic. & postea de pace dñi regis. Item si primò unū de facto, & postea eundem de fortia, & è contrario. Item si primò unū de una plaga, & postea eundem de alia. Item si de una plaga uno loco corporis, & postea de eadem in alio loco. Item si de plaga primò cum gladio, & postea coram justitiariis cum bisācuta. Item si minori crimine appellat<sup>9</sup> sit quis & majori, accipi<sup>1</sup> poterit in minori, donec majus terminetur, secundū q excipi poterit in actione criminali & civili, quia semper terminabitur prius criminalis, quam civilis. Item non

<sup>1</sup> "accipi" omitted MS. Rawl. correct reading, and is found in MS. C. 160. "Excipi" is evidently the Rawl. C. 159.

for word &c as above. And in which case the justices must examine if there be a mayhem or not. But if a mayhem be adjudged, then let there be taken away from the appellee the election of defending himself by his body or by the country, for in this case the appellee will of necessity be confined to defend himself by the country. For the country is sometimes taken away on account of the conviction of the appellee, as if by chance he has acknowledged the act before some persons, who have a record, as may be the case, if some one has castrated another, and has by chance acknowledged that he is in seisine of the testicles, he cannot gainsay the act against their record. f. 145 b.

Exception is sometimes made against this kind of appeal by general exceptions, as above, as if the appellor has not made a sufficient suit, or has not prosecuted before the eyre of the judges, or has not shown a wound to the coroners, or has shown only a graze or a bruise, a swelling, blows with a stick and not with a sharp weapon. Likewise on account of a variation, as if he at first appeals concerning the peace of the king, and now he appeals concerning the peace of the viscount. Likewise if at first concerning the peace of the viscount, and afterwards concerning the peace of the king. Likewise if he appealed one as principal, and afterwards the same person as accessory, and the converse. Likewise if at first one person for one wound, and afterwards the same person for a different wound. Likewise if for one wound in one part of the body, and afterwards for the same wound in another part of the body. Likewise if at first for a wound with a sword, and afterwards before the justices with a two-edged weapon. Likewise if a person is appealed for a minor and a major charge, an exception may be made in the minor until the major charge is terminated, in accordance with the exception which may be taken in a criminal and a civil action, for the criminal action must always be terminated before the civil action. 2. Of exceptions against this kind of appeal.

omnis plaga facit appellum, quia parvitas plagæ, ut prædictum est, declinat appellū, & hoc relinquitur discretioni justitiariorū, dum tamen si in capite facta fuerit, sufficit si attigerit usq; ad os pfunditas, & in quocunq; alio membro. Et si os frangatur, quod faciliè ppendi poterit p renoduram, vel testa capitis frangatur, ita quòd extrahantur ossa vel skerda magna levetur, declinabitur & cadet duellū ppter mahemiū.

3. Mahemium verò dici poterit, ubi aliquis in aliqua parte sui corporis effect<sup>9</sup> sit inutilis ad pugnandū, & maximè p illū quem appellat, ut si ossa extrahantur à capite, & skerda magna levetur, ut prædictum est. Item si os frāgatur, vel pes, vel man<sup>9</sup>, vel digit<sup>9</sup>, vel articulo<sup>9</sup> pedis vel man<sup>9</sup>, vel aliud membrū abscindatur, vel p plagā factā cōtracti sunt nervi, & membrum aliq; vel quòd digiti curvi reddātur, vel si ocul<sup>9</sup> effossus fuerit, vel aliud fiat in corpore hominis, p q min<sup>9</sup> habilis & utilis reddatur ad se defendendū. Sed quid dicetur de eo qui dentes habet fractos? si fractio dentium judicari debeat ad mahemium? Ad q sciendum, quòd est quoddam mahemium, quo quis inutilis efficitur ad pugnandū, de quo supradictum est.

4. Est & aliud, q deformitatem corporis inducit, & non mahemiū, & unde refert utrum fracti sunt dentes præcisores, molares, sive maxillares, quia si molares sive maxillares, cū latens sit mahemium non multū inducit corporis deformitatē, nec inutilitatē ad pugnandū. Si autem præcisores, videtur quòd ex hoc inducitur utrumq; hujusmodi verò dentes multum adjuvant ad devincendum. Castratio verò quāvis latens sit, adjudicatur ad mahemiū. Sunt & alia genera mahemii, p

Quid dici  
debeat ma-  
hemium.  
Britton, i.  
ch. xxvi.  
§ 1.  
Fleta, 58.

Quid sit  
deformitas,  
et non ma-  
hemium.

Likewise not every wound gives ground for an action, for the slightness of the wound, as aforesaid, avoids the appeal, and this left to the discretion of the justices, provided that if the wound is in the head, it is sufficient if it is deep enough to reach the bone, and in the case of any other limb. And if the bone is broken, which may easily be ascertained by a plummet line, or the skull of the head be fractured, so that either portions of bone are removed or a great crust is raised, battle shall be avoided and fall to the ground on account of the mayhem.

But mayhem is so termed when any one is rendered in any part of his body disabled from fighting, and chiefly by him whom he appeals, as if portions of bone shall have been extracted from his head, and a great crust is raised as aforesaid. Likewise if a bone be broken, or a foot, or a hand, or a finger, or a joint of a foot or of a hand, or any other member be cut off, or the nerves or some limb have become contracted by the wound so made, or the fingers have been rendered crooked, or if an eye has been scooped out, or anything else has been done to the body, whereby a man is rendered less able and competent to defend himself. But what shall be said of him who has his teeth broken? if the breakage of teeth is to be adjudged a mayhem? To which it is to be answered, that everything whereby a man is disabled from fighting, as above said, is a mayhem.

3.  
What  
ought to  
be termed  
mayhem.

There is another thing which causes disfigurement of the body, and not mayhem, and hence it matters whether the teeth so broken are fore-teeth, molar-teeth, or jaw-teeth, because if they are molar-teeth or jaw-teeth, since the mayhem is latent, it does not cause much disfigurement of the body or disability for fighting. But if they are fore-teeth, it seems that both these results follow, for teeth of this kind assist much to victory. Castration, however, although it be latent, is adjudged to be mayhem.

4.  
What is  
disfigure-  
ment, and  
not may-  
hem.

Britton, i.  
ch. xxvi.  
§ 1.

quib<sup>9</sup> non remanebit duellū, ut videt, ut si auricula  
abscindatur vel nasus, hoc enim magis erit ad defor-  
mitatem corporis, quàm ad virium defectum.

## CAP. XXV.

f. 145 b.  
1.  
De appello  
de pace et  
imprisona-  
mento, et  
de verbis  
appelli, et  
de modo  
appellandi  
et defe-  
dendi.

In præcedentibus dictum est de pace, plaga & ma-  
hemio, nunc autem dicendum est de pace & impriso-  
namento, ubi liber homo s. captus fuerit & imprisona-  
tus contra pacem in curia, vel infra libertatem alicujus,  
sive fuerit inclusus domo vel castro, civitate, villa vel  
burgo, et in ferro, vinculis, vel ligno detentus contra  
pacem, donec per servientem domini regis, vel breve  
suum fuerit deliberatus, cū fuerit vetitus per plevi-  
nam, poterit enim quis in hoc dupliciter delinquere,  
uno modo per injustam captionem, et alio modo prop-  
ter injustam detentionem, verba autem appelli sunt  
hæc. A. appellat B. quòd sicut fuit in pace domini  
regis (ut suprà) venit idem B. cum vi sua contra pa-  
cem &c. ut suprà, et duxit eum ad talem curiam, vel  
ad talem locum, et ibi eum posuit in vinculis, et in  
ferro, et in cippo, et in priona, ibi eum tenuit per  
tantum tempus, et plagas ei fecit & mahemium, donec  
deliberatus fuit per ballium domini regis, vel donec  
tantum ei dedit pro redemptione sua, & quòd hoc  
fecit nequiter, & in felonia, offert probare per corpus  
suum, vel alio modo sicut curia domini regis conside-  
raret. Idem A. appellat alium de fortia, & alium  
talem de præcepto. Et B. venit & defendit vim &  
injuriam, & pacem domini regis infractam, & captio-  
nem & imprisonmentum, & detentionem in priona,  
& redemptionem tot solidorum, plagam, & mahemium,  
& quicquid ei imponitur, secundum quod ei imponitur

There are other kinds of mayhem, for which battle is not allowed, as it seems, as if an ear or a nose is cut off, for this contributes more to disfigurement than to disablement.

## CHAPTER XXV.

We have spoken in the preceding pages of breaches of the peace, wounds, and mayhem, now indeed we will speak of breaches of peace and imprisonment where a freeman has been seized and imprisoned against the peace in a court, or within somebody's franchise, or has been shut up in a house or a castle, in a city, a vill, or a borough, and detained in irons, chains, or the stocks against the peace, until he has been liberated by the serjeant of the lord the king, or through the king's writ, when he was forbidden through a plevin, for a person may in this commit a twofold delict, in one way by an unjust seizure, and in another way on account of an unjust detention, but the words of the appeal are these: A. appeals B. that as he was in the peace of the lord the king (as above), the said B. came with force against the peace &c. (as above), and led him away to a certain court, or to a certain place, and there cast him into chains and in irons, and in the stocks, and in prison, and there kept him for such a time, and inflicted upon him wounds and mayhem until he was delivered by the bailiff of the lord the king, or until he gave him so much for his ransom, and that he did this wickedly and feloniously, he offers to prove by his body, or in any other way that the court of the king thinks fit. The said A. appeals another as accessory by force, and another as accessory by precept. And B. comes and defends the force and injury, and the breach of the lord the king's peace, and the seizure and the imprisonment, and the detention in prison, and the ransom for so many pounds sterling, the wound and the mayhem, and whatever is imputed to him, according to

f. 145 b.  
1.  
Of an appeal for a breach of the peace and imprisonment, and of the words of the appeal, and the mode of appealing and of defending.

p corpus suum, vel alio modo, secundum quod curia domini regis considerat. Quo casu, si per corp<sup>o</sup> se defenderit, cum electionem habuerit, fiat ut supra de aliis appellis, & hoc nisi defensiones habeat & exceptiones, quas statim proponat ad declinandum appellum.

2.  
De excep-  
tionibus  
contra hu-  
jusmodi  
appellum.

Poterit enim (sicut in aliis appellis) petere quod sibi allocetur, quod appellans hutesium non levavit, vel quod sectam non fecit (ut supra), vel quod varius est in appello suo, vel poterit cognoscere quod talem non imprisonavit ut liberum hominem, sed ut servum & nativum suum, ad quod si appellans dicat se esse liberum, habeat appellatus incontinenti parentes appellantis villanos, qui se cognoscant esse villanos, & secundum hoc terminetur negotium, vel per corpus, vel per patriam, secundum verba appelli, & sequatur poena vel non sequatur, secundum qualitatem delicti.

3.  
Qualiter in  
appello  
isto agi  
poterit  
civiliter,  
vel crimi-  
naliter,  
cum ad-  
jectione  
feloniae vel  
non.

In appello autem de pace & plagis & imprisonamento, agi poterit civiliter licet factum sit criminale, ut si quis dicat quasi conquerendo de injuria, & sine adjectione feloniae, quod talis imprisonavit talem contra pacem domini illius curiae, vel si querela fuerit in civitate, villa, vel burgo, tunc contra pacem dominorum & pacem ballivorum, si autem in comitatu, tunc contra pacem vicecomitis, si autem contra pacem domini regis sine felonia adjecta, tunc nullus inferior se intromittat, vicecomes nec alius, scilicet vicecomes non nomine suo, sed nomine ipsius regis, cujus pax nominatur. Et hic non sequitur aliqua poena corporalis, sed tantum pecuniaria, ratione damnorum, quod secus esset si felonia esset adjecta, ubi inquisitio solummodo pertinet ad regem, quia vertitur periculum vite & membrorum, & ad nullum alium pertinet iudicium nisi



what is imputed to him, by his body, or in any other way as the court of the lord the king thinks fit. In which case, if he shall defend himself by his body, when he has had the choice, let it be done as in the other appeals, and this unless he has defences and exceptions which he should propound forthwith to avoid the appeal.

For he may (as in other appeals) claim that he should be allowed, that the appellor has not raised the hue, or that he has not made suit (as above), or that he has varied in his appeal, or he may acknowledge that he has imprisoned the said person not as a freeman, but as his serf and his naif, to which if the appellor declares that he is a free man, let the appellee at once produce the villein parents of the appellor, who should confess themselves to be villeins, and accordingly let the business be terminated either by battle or by the country, according to the words of the appeal, and let punishment follow or not according to the quality of the offence.

But in an appeal for breach of the peace and imprisonment, a civil action may be brought, although the act be criminal, as if any one should say as it were by complaint concerning an injury, and without the addition of felony, that such an one imprisoned such an one against the peace of the lord of that court, or if the complaint be made in a city, or a vill, or a borough, then against the peace of the lords or the peace of the bailiffs, but if in a county, then against the peace of the viscount, but if it be said against the peace of the king, without the addition of felony, then let no inferior authority interfere, neither viscount nor other authority, to wit the viscount not in his own name, but in the name of the king, whose peace is mentioned. And here no corporal punishment follows, but only a pecuniary penalty, by reason of the losses [incurred], which would be otherwise if felony were added, when the inquisition pertains to the king alone, because danger of life and limb is incurred, and the judgment belongs to

2.  
Of exceptions  
against  
this kind of  
appeal.

3.  
In what  
manner in  
this appeal  
a civil or a  
criminal  
action may  
be brought,  
with the  
addition of  
felony or  
not.

f. 146. ad regem, nec etiam imprisonment, quia nullus potest in hoc casu judicare nisi rex, nec habebit aliquis inde curiam suam, nisi speciali gaudeat libertate per ipsum regem, secundum, quod inferius dicitur<sup>1</sup> plenius de actionibus personalibus civilibus, quæ ex delictis oriuntur.

## CAP. XXVI.

1. Dictum est suprâ de actione criminali, quæ oritur de pace & imprisonment: nunc autem ex illa dicendum, quæ oritur ex pace & roberia. Verbi autem appelli sunt hæc. A. appellat B. quòd sicut fuit in pace domini regis tali loco, tali die, &c. (ut suprâ), venit idem B. cum vi sua, & nequiter & in felonia, & contra pacem domini regis, & in roberia abstulit ei c. s. iii. d. & unum equum talis precii, et unam robam de viridi talis precii, et sic nominare poterit in appello suo plures res diversi generis, dum tamen certum precium apponat, & rem certam designet, qualitatem, quantitatem, precium, pondus & numerum, colorem & pilum, secundum quod superius dictum est in parte. Et quòd hoc fecit nequiter & in felonia, offert se disrationare versus eum per corpus suum, sicut curia considerat &c. Adjungitur quandoque in appello isto plaga, & mahemium, & imprisonment, de quibus supradictum est, vel quædam illorum, secundum diversitatem appellorum. Et B. venit & defendit pacem, & feloniam, & totum de verbo in verbum, secundum quod ei imponitur &c. ut suprâ. Et petit sibi allocari tale quid, & tale. Etiam potest exceptiones apponere, quæ generaliter se habent ad omnia appella ad eorum de-

1. De actione criminali, sic de pace et roberia et de appellis, et de modo appellandi et defendendi.

<sup>1</sup> "quod inferius dicitur." The subject matter of this reference does not appear to have come down to us, if it ever was added by the author, see above, fol. 141 b, and be-

low, fol. 439. This and other references are suggestive, that the work was never completed, as intended by Bracton, when the treatises were consolidated.

no one but the king, nor even [in the case of] imprisonment, because no one but the king can judge in this case, nor shall any one hold a court in this case except he enjoys a special franchise from the king himself, which will be explained below more fully in treating of personal civil actions, which arise out of offences. f. 146.

## CHAPTER XXVI.

We have treated above of a criminal action which arises from a breach of the peace and imprisonment, we must now treat of that which arises from a breach of the peace and a robbery. But the words of the appeal are these : 1. Of a criminal action for a breach of the peace and a robbery, and of appeals, and of the mode of appealing and of defending.

A. appeals B. that as he was in the peace of the lord the king, on such a day, at such a place &c. (as above), the said B. came with force and wickedly and feloniously and against the peace of the lord the king and in robbery took away from him a hundred shillings and three pence, and a horse of such a price and a green robe of a certain price, and so he may name in his appeal several things of different kind, provided he puts a certain price upon them, and describes a certain thing, its quality, quantity, price, weight and number, colour and pile, according to what has been partly said. And that he did this wickedly and feloniously he offers to deraign against him with his body, as the court may think fit, &c. There is added sometimes in that appeal the wound, and the mayhem, and the imprisonment, about which we have spoken above, or some of them according to the diversity of the appeal. And B. comes and defends the peace and the felony, and the whole word for word, according to what is imputed to him &c. as above. And he claims that so and so be allowed him. He may likewise raise exceptions, which apply generally to all appeals for their

clinationem. Si autem nihil sit,<sup>1</sup> quod appellum declinet, tunc defendat se appellatus per corpus suum vel per patriam, cùm in hoc habeat electionem, & secundùm quod se defenderit vel non, pcedatur contra appellatos de fortia & præcepto, secundùm quod, superiùs tactum est. Appellat quandoq, quis alium de alterius rebus, quàm de suis ppriis, ut si ab aliquo robbatæ fuerint res aliquæ, quas habuerit in custodia sua, de rebus domini sui vel alterius, & quo casu, oportet eum docere, quòd sua intersit appellare, quia aliàs appellum non habebit, non magis quàm de morte alicujus extraneæ personæ, & de quo suprà in parte dictum est, secundùm quod plagam receperit & hujusmodi. De re verò aliena docere oportet, quòd de custodia sua robbata fuerit simul cum rebus suis propriis, vel sine, & quòd ipse custos appellans intravit in solutionē de tanta pecunia erga dominum suum. Et de hac materia inveniri poterit de termino Sancti Michaelis anno regni regis H. quarto incipiente quinto in comitatu Suffolk de Rogero de Kerken & hærede de Ver. Item ad hoc facit de termino Sancti Michaelis anno regni regis H. nono incipiente decimo in comitatu Wigori de Thoma de Rupe. Verba appellati<sup>2</sup> sunt hæc.

2.  
De appellis  
de felonia  
et pace  
regis, et  
de verbis  
appelli et  
defendendi  
et respon-  
sione ap-  
pellati.

f. 146 b.

A. appellat B. quòd ubi fuit in pace domini regis tali loco &c. ut suprà. Venit idem B. cum vi sua, & nequiter, et in felonia, et cōtra pacē domini regis, et roberia, abstulit ei decem aureos & unum annulum aureum talis precii, & de denariis domini sui, quos habuit in custodia sua, c. libras sterlingorum, & unde ipse intravit in solutionem erga dominum suum de tanto, vel aliter. A. appellat B. &c. ut suprà, cùm esset tali loco in pace domini regis, vel cùm venis-

<sup>1</sup> "fuerit," MS. Rawl. C. 160.

| <sup>2</sup> "appelli," MS. Rawl. C. 160.

avoidance. But if there be no reason why he should avoid the appeal, then let the appellee defend himself by battle or by the country, since he has the choice in this matter, and according as he has defended himself or not, let proceedings be instituted against those who are appellees as accessories by force or by precept, according to what has been said above. A person sometimes appeals another concerning the goods of another, and not his own, as if a person has been robbed of certain things, which he had in his charge, being property belonging to his lord or to another, and in which case, it behoves him to show that he has an interest to appeal, because otherwise he will not have an appeal, no more than for the death of a strange person, and concerning which we have partly treated, according as he has received a wound or such like. But concerning another person's goods it behoves him to show that they have been stolen out of his charge together with his own things, or without them, and that the keeper of them and the appellor has entered into the payment of so much money towards his lord. And on this subject a case will be found in Michaelmas term in the fourth and fifth years of the reign of king Henry, in the county of Suffolk, concerning Roger de Kerken and the heir of Veer. Likewise a case bearing upon it occurs in Michaelmas term in the ninth and tenth years of the reign of king Henry, in the county of Worcester, concerning Thomas of the Rock. The words of the appeal are these.

A. appeals B., that when he was in the peace of the lord the king at such a place &c. as above, the said B. came with force and wickedly and feloniously and against the peace of the king and by robbery took away from him ten gold coins and one gold ring of such a price, and of the money of his lord, which he had in his charge a hundred pounds sterling, and of which he has entered into the payment of so much to his lord, or otherwise. A. appeals B. &c. as above, that when he was in such a place in the peace of the lord the king, or

2.  
Of appeals  
and the  
peace of  
the king,  
and of the  
words of  
the appeal  
and the  
defence,  
and the  
answer of  
the defend-  
ant.

set à tali loco usque ad talem locum cum denariis domini sui, vel cum aliis catallis, vel rebus ad valentiam c. s., venit idem B. cum vi sua, & nequiter & in felonia &c. (ut suprà) & roberia abstulit ei tantum de catallis suis propriis, & tantum de rebus domini sui, & unde intravit in solutionem &c. ut suprà. Et B. venit, & defendit roberiam, & pacem, & totum &c. ut suprà. Et ita fiat ut suprà. Et si plures appellati sunt de fortia, loquatur idem A. versus eos, quia ita conjuncti sunt de facto & fortia, quòd à diversis appellari non possunt, nec potest aliquis hic variare magis quàm suprà, unde si quis primò appellaverit per corpus proprium, & postea per corpus alterius, non valet appellum, ut supradictum est de Thoma de Rupe. Quæ autem pœna sequatur illum qui convictus est, docet qualitas & enormitas delicti. Indicitur enim quandoque adeptio vitæ, quandoque membrorum truncatio, sicut in itinere M. de Pateshull in comitatu Lincoln de Thoma de Rasne.

## CAP. XXVII.

1.  
De appello  
de iniqua  
combustione et  
roberia et  
modo appellandi et  
defendendi.  
Britton,  
l. i. ch. x.

Dictum est suprà de roberia, nunc autem dicendum est de roberia & iniqua combustione. Si quis autem turbida seditione incendium fecerit nequiter & in felonia, vel ob inimicitias vel prædandi causa, capitali puniatur pœna vel sententia. Nequiter dico, quia incendia fortuita, vel per negligentiam facta, & non mala conscientia, non sic puniuntur, quia civiliter agitur contra tales. Si quis igitur ædes alienas nequiter combusserit, & fugerit, si sit qui accuset, & appellet, et sequatur, procedatur contra ipsum sicut de alia

when he was coming from such a place to such a place f. 146 b.  
 with the money of his lord, or with other chattels or  
 things to the value of a hundred shillings, the said B.  
 came with force and wickedly and feloniously &c. (as  
 above) and by robbery took away from him so much of  
 his own chattels and so much of the things of his lord's,  
 and of which he has entered into the payment &c. as  
 above. And B. comes and defends the robbery and the  
 breach of the peace and the whole &c. as above. And  
 let it be so done as above. And if several are appealed as  
 accessories by force, let the said A. speak against them,  
 because they are so connected as principals and acces-  
 sories, that they cannot be appealed by different persons,  
 nor may any one vary here more than above, whence if  
 any one shall have at first appealed with his own body,  
 and afterwards with the body of another, the appeal is  
 not valid, as above said in the case of Thomas of the  
 Rock. But what punishment attends him, who is con-  
 victed, the quality and enormity of the offence points  
 out. For sometimes loss of life is imposed, sometimes  
 the mutilation of a limb, as in the eyre of Martin de  
 Pateshull in the county of Lincoln concerning Thomas de  
 Rasne.

## CHAPTER XXVII.

We have treated above of robbery, we must now  
 treat of robbery and of wicked arson. But if any one  
 in a tumultuous sedition wickedly and feloniously, or  
 from private enmity, or for the sake of plunder has caused  
 a conflagration, let him be punished with capital punish-  
 ment and a sentence. I say wickedly, because a con-  
 flagration which is accidental or has been caused by  
 negligence, and not with a malicious design, is not so  
 punished, but against such [offenders] a civil action lies.  
 If any one therefore has set fire to another person's house  
 and has run away, if there be any one to accuse him,  
 and to appeal him, and to sue him, let proceedings be  
 had against him, as in any other felony: if not, then let

1.  
 Of an  
 appeal for  
 wicked  
 arson and  
 robbery,  
 and the  
 mode of  
 appealing  
 and of de-  
 fending.

felonia : si non, tunc inquiratur veritas in adventu justitiariorum, ut suprà de aliis appellis. Si autem captus fuerit, & sit qui sequatur, tunc irrotuletur appellum in comitatu in hæc verba. A. appellat B. quòd cùm ipse esset in pace domini regis, in tali loco, tali die &c. ut suprà, venit idem B. nequiter & in felonia &c. ut suprà, ubi ipse A. interfuit & vidit, et ignem apposuit domibus suis & eas combussit, et de denariis & catallis suis in roberia contra pacem domini regis asportavit tales res designatas, et nominatas, ad valentiam tanti, & quòd hoc fecit nequiter, et in felonia offert &c. Et B. venit, et defendit totum, de verbo in verbum &c. ut suprà, secundum quod ei imponitur, & tunc (ut suprà) petat sibi fieri allocationes, & proponat exceptiones, si quas habet, vel per legem terræ se defendat &c. ut suprà.

## CAP. XXVIII.

f. 147. Est inter alia appella, quoddam appellum q dicitur  
 1. de raptu virginum : & est raptus virginis quoddā  
 De appellis crimen, q fœmina imponit alicui de quo se dicit esse  
 de raptu violenter oppressam, cōtra pacem dñi regis, q quidem  
 virginum. crimen si cōvincatur, sequitur pœna, s. amissio mem-  
 Britton, brorū, ut sit membrū p mēbro, quia virgo cū cor-  
 i. ch. xv. rumpitur, membrū amittit, et idē corruptor puniatur  
 Fleta, 53. in eo in quo deliquit, oculos igitur amittat ppter  
 aspectū decoris, quo virginē cōcupivit, amittat & testi-  
 culos, qui calorē stupri induxerunt. Non autē sequitur  
 hujusmodi pœna de qualibet fœmina, licet vi opprima-



the truth be inquired into upon the arrival of the justices, as in other appeals. But if he has been caught, and there is some one to sue him, then let the appeal be enrolled in the county court in these words: A. appeals B. that when he was in the peace of the lord the king in such a place, on such a day &c. as above, the said B. came wickedly and feloniously &c. as above, where A. himself was present and saw him, and set fire to his houses, and burnt them down, and of his money and chattels by robbery against the peace of the lord the king carried away such things, as described and named, of the value of so much, and that he did this wickedly and feloniously he offers [to prove] &c. And B. comes and defends himself, word for word, as above, according to what is imputed to him, and then (as above) let him ask that certain allowances be made to him, and let him propound his exceptions, if he has any, and let him defend himself by the law of the land &c. as above.

## CHAPTER XXVIII.

There is amongst other appeals a certain appeal, which is called concerning the rape of virgins,<sup>1</sup> and the rape of a virgin is a certain crime, which a woman charges against a man, by whom she says that she has been violently overpowered against the peace of the lord the king, which crime if it be proved, there follows a penalty, namely the loss of members, that there shall be member for member, because when a virgin is deflowered, she loses a member, and therefore the deflowerer should be punished in that member with which he has offended, let him therefore lose his eyes, on account of his looking at the beauty, for which he coveted possession of the virgin, and let him lose his testicles, which brought on the lust of ravishment. But this penalty does not follow in the case of every female, although she should be over-

f. 147.

1.  
Of appeals  
concerning  
the rape of  
virgins.

<sup>1</sup> Statute of Westminster 2, § 34.

tur. Sequitur tamen alia gravis & gravior, secundum qd' fuerit nupta, vel vidua honestè vivens, sanctimonialis, vel alia matrona.<sup>1</sup> Itè cōcubina legitima,<sup>2</sup> vel alia<sup>3</sup> quæstū faciens sine delectu quidē psonarum, quas quidem omnes debet rex tueri ppter pacem suā, sed non erit de qualibet par pœna. Olim quidem corruptores virginitatis & castitatis suspēdebant, & eorū fautores, cū nec tales ab homicidii crimine vacui essent, & maximè cū virginitas & castitas restitui non possunt: modernis tamen temporib<sup>9</sup> aliter observatur, q p corruptione virginis amittuntur mēbra, ut prædictum est, & de aliis sequitur alia gravis pœna corporalis, sed tamen sine amissione vitæ & membrorum. Et cū virgines & viduæ & sanctimoniales Deo sunt dedicatæ, corruptio earum non solū ad injuriam hominū, verum etiam ad ipsius Dei omnipotentis irreverentiam cōmittitur, & sine vindicta talis non cōquiescat<sup>4</sup> insania. Cū igitur virgo sic corrupta fuerit, et oppressa cōtra pacē dñi regis, statim, & dum factum recens fuerit, cum clamore & hutesio accedere debet ad villas vicinas, & ibi injuriam sibi illatam p bis hominib<sup>9</sup> ostendere, sanguinē & vestes suas sanguine tinctas, & vestiū scissiones, & sic ire debet ad præpositum hundredi, & ad servientē dñi regis, & ad coronatores, & ad vic. et ad primū cōm faciet appellū suum, nisi ita sit qd' immediatè statim faciat querelā suā dño regi, vel justitiariis suis, ubi diceſ ei, qd' sequatur ad cōm, & in rotulis coronatorū irrotuletur appellum suum, et omnia verba appelli, secundum qd' illud pposuerit p ordinē, et ann<sup>9</sup> et dies, quib<sup>9</sup> fecerit appellum suum, & dabitur dies in adventu justitiariorum, ad quem iterū corā eis pponat appellū suū, p eadē verba, quib<sup>9</sup> pposuit in cōm, & à quib<sup>9</sup> recedere non licet, ne cadat appellum ppter variationem, sicut in aliis appellis, & cautela est

<sup>1</sup> "vel matrona," MS. Rawl. C. 160.

<sup>2</sup> "legitima," omitted MS. Rawl. C. 160.

<sup>3</sup> "vel una vel alia," *ibid.*

<sup>4</sup> "quiescat," MS. Rawl. C. 160.

powered by violence. Nevertheless, another severe and still more severe penalty follows, according as she is a married woman, or a widow living honestly, a woman of a saintly character, or some other kind of matron. Likewise a lawful concubine, or another making her livelihood without any discrimination of persons, all of whom the king ought to protect for the sake of his own peace, but there will not be in each case a like punishment. Formerly the deflowerers of virgins and of chastity were hanged, and their abettors, since such persons were not clear of the crime of homicide, and chiefly since virginity and chastity cannot be restored; but in modern times it is differently observed, that for the defilement of a virgin members are lost, as above said, and concerning others other grave corporeal punishment follows, but nevertheless without the loss of life or of members. And when virgins and widows and saintly persons are dedicated to God, their deflowering not only works an injury to mankind, but also an irreverence towards God, and without an avengement such madness will not be put to rest. When therefore a virgin has been so deflowered and overpowered against the peace of the lord the king, forthwith and whilst the act is fresh, she ought to repair with hue and cry to the neighbouring vills, and there display to honest men the injury done to her, the blood and her dress stained with blood, and the tearing of her dress, and so she ought to go to the provost of the hundred and to the serjeant of the lord the king, and to the coroners and to the viscount, and make her appeal at the first county court, unless it be that she can forthwith make her complaint immediately to the lord the king or to his justices, where it shall be told her, that she should attend the county court and have her appeal enrolled in the rolls of the coroners and all the words of her appeal, according as she has propounded it in order, and from which she is not allowed to recede, lest her appeal should fall to the ground on account of a variation, as in other

H H 2

in appello isto, & in aliis appellis, qd' primò audiatur appellum ab appellante, & postea irrotulatio coronatorū, qualiter appellū illud factum fuit in cōm, & hoc ideò, ne si rotula<sup>1</sup> coronatoris prius legerentur, possit appellans p illa<sup>2</sup> formare suum appellum. Adelstane.<sup>3</sup> Raptus mulieris ne fiat, defendit tam lex humana quàm divina, & sic fuit antiquitus observatum, q. si quis obviaverit mulieri, vel alicubi invenerit eam solā, vel socios habuerit, cum pace dimittat eam, quàm si p inhonestatē tetigerit, frāgit edictum dñi regis, & emendabit secundum iudicium cōm. Si autē contra voluntatē ejus jactet eam ad terrā, forisfaciat gratiā suam, q. si impudicē discooperuit eam, et se super eam posuerit, omniū possessionū suarū incurrit dānum, qd' si cōcubuerit cum ea, de vita et membris suis incurrit damnum. De pœna ejusdem secundum legem Romanorum, Francorum, & Anglorum. Si eques esset, equus suus ad dedecus suum decoriabatur de superiori labro, & cauda quam propius natibus abscindere debuit. Item canis si secum habeat, leporarius vel alius, eodem modo dedecorabitur. Si habuerit ancipitrem, perdat beccum & ungues pedum, & caudam. Terra verò & omnis pecunia, quam ipse raptor perdidit, p sua miseria dabitur mulieri, warrantizante sibi omnia rege. Et si meretrix fuit antè, tunc non fuit meretrix, cū nequitiae ejus reclamando consentire noluit. Quòd autem modo fiunt quædam dispensationes, s. quòd ipsi raptores accipiunt violatas in matrimonium, non est de lege, sed de permissione sanctæ ecclesiæ & regis, & illa permissio solius regis est in regno. Et primò

f. 147 b.

<sup>1</sup> "rotuli," MS. Rawl. C. 160.<sup>2</sup> "illos," *ibid.*<sup>3</sup> "Adelstane." In MS. Rawl. C. 160, this word is transferred to the end of the quotation, and is inserted after "dampnum," followed immediately by the words *Lege Roma-*

*norum, Francorum, et Anglorum,*  
*"equus ei tamen ad dedecus suum*  
*"dedecorabitur desuper ballenro,*  
*"et cauda quam propius natibus*  
*"abscondi poterit." MS. Rawl. C.*  
 159 has a similar reading.

appeals, and there is a caution to be observed in that appeal and in other appeals, that the appeal made by the appellor should be first heard, and then the roll of the coroners [be read], in the manner in which that appeal was first made in the county court, and so for this reason, lest if the rolls of the coroners should be first read, the appellor might fashion his appeal after them. *Adelstane*. Both human and divine laws forbid, that a rape should be committed on a woman, and thus it was observed in ancient times, that if any one met a woman, or found her anywhere alone, or had companions with him, he should let her go free in peace, and if he touched her to dishonour, he has broken the edict of the lord the king, and shall make amends according to the judgment of the county court. But if he should throw her down upon the ground against her will, he should forfeit his grace, but if he should uncover her immodestly and place himself upon her, he should incur the loss of all his possessions; but if he should have connection with her, he should incur the loss of his life and of his members. Concerning the punishment of the same according to the law of the Romans, the Franks, and the Anglians. If he should be a knight, his horse for his disgrace shall be stripped of the skin of his upper lip, and his tail cut off close to his rump, and his dog, if he has one with him, a greyhound or other dog, shall be disgraced in like manner. If he has a hawk, it shall lose its beak and the claws of its feet and its tail. But his land and all the money, which the ravisher has lost, shall be given to the woman for her misery, the king warranting it all to her. And if she were a harlot before, she was not then a harlot, since she was unwilling to consent to his wickedness by crying out against him. But that in modern times certain dispensations are granted, to wit, that the ravishers themselves may take the ravished women to matrimony, is not in virtue of the law, but in virtue of the permission of holy church and of the king, and the permission of the king alone is valid in this kingdom. And it first sprung

f. 147 b.

surrexit in Francia, p quodam comite qui hospitatus est quendam joculatorem cum uxore sua ppulchra,<sup>1</sup> quo mortuo (quali morte non curamus evolvere) ipse quidem comes habuit eam, ipsa nolente. Ipsa autem<sup>2</sup> quadam nocte exivit à castello, & fugiens venit Parisiis, ubi invenit regem Robertum, & cadens ad pedes ejus narravit eventum rei. Quam ut rex audivit, misit ppter episcopos & barones, qui tunc erant cum eo ad curiam, & præcepit mulieri ut narraret eis omnia sicut ei fecerat, quod & ipsa fecit. Rex autem consilio episcoporum & baronum, misit propter comitem, ut statuto die veniret ad curiam, ad disrationandum vel defendendum<sup>3</sup> se si posset. Comes autem ut audivit verba regis, timens iram regis pro suo maleficio, respondit quòd ad hunc terminum non posset ire ad curiam, sed consilio amicorum suorum mandavit regi, ad pacificandam iram suam, q daret ei ducentas libras Beluacensis monetæ, et x. equos de precio tanto:<sup>4</sup> jocularitrici autem centum libras, et eam daret in conjugem diviti burgensi, aut militi, qui eam honestè custodiret omnib<sup>5</sup> diebus vitæ suæ. Rex quidem omnia hæc subsannando renuit dicens, quòd non esset justus vicarius Dei, si tantam nequitiam venderet inultam p argento, & cum magna ira fecit summonere exercitum, disponens ire super eum, sed barones precati sunt regem, ut eis inducias octo dierum donaret, et quòd possent eum adducere ad misericordiam suam: quod vix concessit, & sic ipse comes consilio baronum venit ad curiam, & cùm rex comparuit, quòd vellet cadere ad pedes ejus, divertit se dicens, aut pateretur justitiam aut discederet à curia. Quid plura? omnes barones clamaverunt & confirmaverunt contra regem, quòd

<sup>1</sup> "pulchra," MS. Rawl. C. 160.

<sup>2</sup> "ipsa enim," MS. Rawl. C. 160.

<sup>3</sup> "vel defendendum," omitted MS. Rawl. C. 160.

<sup>4</sup> "tanto," omitted MS. Rawl. C. 160.

up in France for a certain count, who received in his house a certain juggler with a very beautiful wife, upon the death of which juggler (how he died we care not to elucidate) the count had her against her will. But she herself on a certain night escaped from the castle and came as a fugitive to Paris, where she found king Robert, and falling at his feet narrated to him the circumstances of the crime. Which when the king had heard, he sent for the bishops and the barons, who were then with him at his court, and ordered the woman to narrate to them the whole story as she had told it to him, which she did. The king then upon the advice of the bishops and the barons, sent for the count, that he should come on a certain day to the court to derayne and defend himself, if he could. But the count, when he heard the words of the king, fearing the anger of the king for his misdeed, answered that he could not at that time attend the court, but upon the advice of his friends sent word to the king, to pacify his anger, that he would give the king two hundred pounds of Beauvais money, and ten horses of equal value; and that he would give to the juggler's wife a hundred pounds, and would give her in marriage to a rich burgher or knight, who would maintain her honourably all the days of her life. The king indeed refused all these proposals with a smile, saying that he would not be a just vicar of God, if he sold impunity of such wickedness for money, and with great anger ordered his army to be summoned, determining to march against him, but the barons begged the king, to allow them a truce of eight days, and that they could bring him to submit to the mercy of the king, which he agreed to with difficulty; and so the count upon the advice of the barons came to the court, and when the king appeared, he wished to fall down at his feet, the king turned aside saying that he must either submit to justice or depart from the court. Why more? all the barons exclaimed and affirmed against the king, that the king had granted him

ipse rex concesserat ei misericordiā suā, quando miserunt p eo, tandem rex vix concessit. Episcopi, comites & barones locuti cum comite, disposuerunt, quòd ipse comes duceret eam in uxorem, quæ erat pulchra<sup>1</sup> & sapiens, & quæ largita est multas eleemosynas ecclesiis & pauperibus: quæ tamen de Judeis nata, à patre & matre & cunctis parentibus. Hæc dispensatio à talibus & tantis facta, in tantum excrevit & sublimata est, quòd jam multis locis quasi consuetudinaria habetur.<sup>2</sup> Verba autem appellii sunt hæc.

2.  
De verbis  
appellii  
mulieris  
querentis  
de raptu  
et defen-  
sione ap-  
pellati.

f. 148.

A. foemina talis s. appellat B. quòd sicut esset in tali loco, tali die, tali anno &c. ut suprà, vel cum iret à tali loco usq. ad talem locum, vel cùm esset tali loco faciendo tale opus, venit idem B. cum vi sua, & nequiter & cōtra pacem domini regis concubuit cum ea, & abstulit ei pucillagium suum sive virginitatem, & eam secum detinuit per tot noctes, & sic totum exponat factum & veritatem, & quòd hoc fecit nequiter & in felonia, offert pbare versus ipsum, sicut curia domini regis consideraverit. Et B. venit & defendit feloniam & pacem, & raptū, et totum, de verbo in verbum, sicut curia domini regis consideraverit. Et quo casu oportebit de necessitate se defendere p patriam, ppter defectum alterius pbationis & ppter sexum muliebrem, nisi exceptiones habeat sibi competentes, per quas declinare possit appellum.

3.  
De excep-  
tione con-  
tra appel-  
lum.

Excipere enim poterit contra appellum, quòd secta non est sufficienter facta, secundum quod dicitur in aliis appellis. Item excipere poterit & dicere quòd non abstulit ei pucillagium suum, quia adhuc virgo est, et quo casu, probetur veritas p aspectum corporis, & per

<sup>1</sup> "nimis pulchra," MS. Rawl. C. 160.

The entire passage from the commencement of the Law of Athelstane, *Raptus mulieris*, &c.

down to *consuetudinaria habetur*, inclusive, is transposed in MS. Rawl. C. 160, and is inserted in a later place after "ut membra sua redimat ex necessitate."



mercy, when they sent for him ; at length the king with difficulty gave way. The bishops, counts, and barons having spoken with the count, determined that he should take the woman to his wife, who was fair and wise, and who gave much alms to the churches and to the poor ; who however was born of Jews, her father and her mother and all her relatives. This dispensation granted by such personages, grew up into such favour and repute, that in many places it is now held to be customary. But the words of the appeal are these.

A. being such a woman for instance appeals B. that as she was in such a place, on such a day, in such a year &c. as above, or when she was going from such a place to such a place, or when she was in such a place engaged in doing such a work, the said B. came with violence and wickedly and against the peace of the king had connection with her, and took away her pucelage or virginity, and kept her with him for so many nights, and so she explains the entire fact and truth, and that he did this wickedly and feloniously, she offers to prove against him, as the court of the lord king shall determine. And B. comes and defends the felony and the breach of the peace and the rape and the whole story, word for word, according as the court of the lord the king shall decide. And in which case it is incumbent of necessity for him to defend himself by the country on account of the defect of the other's proof and on account of her feminine sex, unless he shall have competent exceptions to warrant him in declining the appeal.

2.  
Concern-  
ing the  
words of  
of the  
appeal of a  
woman  
complain-  
ing of rape  
and concern-  
ing the  
defence of  
the ap-  
pellee.  
f. 148.

For he will be able to except against an appeal, that the suit has not been sufficiently followed up, as is said in other appeals. Likewise he may except and say that he did not take away her pucelage, and that she is still a virgin, and in which case the truth may be proved by

3.  
Concern-  
ing the  
exception  
against an  
appeal.

quatuor legales foeminas juratas de dicenda veritate utrum virgo sit vel corrupta, quæ quidem si dicant ipsam esse virginem, recedet appellatus quietus de appello illo & foemina custodiatur. Si autem invenerint ipsam esse corruptam, tunc inquirendum est, ut videatur, à quo? ab appellato vel ab alio, sed non per foeminas illas, sed p patriam. Et de hac materia inveniri poterit de ultimo itinere M. de Pateshull in comitatu Norff. anno regni regis H. duodecimo de A. filia Radulphi de Sherings.<sup>1</sup> Item excipere poterit contra eam & dicere, quòd ante diem & annum cōtentos in appello, habuit eam ut concubinam & amicam suam, & inde se ponat super patriam. Item excipere poterit, quòd eam habuit & decorruit de voluntate & non cōtra voluntatem, & quòd modo eum appellaverit, hoc est in odium alterius mulieris, quam ut concubinam habet, vel quam duxit in uxorem, & per instinctum alicujus parentis sui. Item excipere poterit, quòd anno & die, quo hoc fieri debuit, fuit alibi extra regnum, vel in provincia in tam remotis partib<sup>9</sup>, quòd verisimile esse non poterit, quòd hoc q ei imponitur fieri posset per ipsum. Itē excipere possit de omissione facta in appello, ex eo quòd nihil aliud dicit, nisi quòd cōcubuit cum ea, nulla facta mentione de pucellagio, & multæ aliæ possunt esse exceptiones, de quibus ad p̄sens nihil recolo.

4.  
Si appellatus per patriam fuerit convictus, quæ pœna sequatur.  
Glanville, l. xiv. c. 6.

Cū autem nihil sit p q declinari possit appellum, si appellatus p patriam fuerit condemnatus, sine aliqua redemptione oculos amittat & testiculos, supradicta ratione, nisi ita sit quòd foemina sic corrupta eum petat in virum ante judicium redditum, quia hoc est tantum in voluntate mulieris & non viri, quia si hoc esset in voluntate viri, sic sequeretur istud inconueniens, servum vz. vel ignobilē mulierem nobilem & generosam unius pollutionis occasione ppetuo foedare,

<sup>1</sup> "de Levinia filia Radulphi de Scherynges." MS. Rawl. C. 160.

the inspection of her person, and by four loyal women sworn to speak the truth whether she is a virgin or has been deflowered, who indeed if they shall say, that she is a virgin, let the appellee retire acquitted of that appeal, and let the woman be kept in custody. But if they shall find her to be deflowered, then inquiry is to be made, as it appears, by whom? by the appellee or by another, but not through those women, but through the country. And on this matter something will be found in the last iter of Martin de Pateshull in the county of Norfolk, in the twelfth year of the reign of king Henry, concerning A. the daughter of Ralph de Sherings. Likewise he may except against her, that he had her and deflowered her with her will, and not against her will, and that she has lately appealed him in hatred of another woman, whom he keeps as a concubine, or whom he has taken to be his wife, and through the instigation of some of her relatives. Likewise he may except, that on the day and year, when this ought to have happened, he was out of the kingdom, or in a province in such remote parts, that it can not be proveable, that the act which is imputed to him can have been done by him. Likewise he may except concerning an omission made in the appeal, upon the fact that it says nothing, but that he had connection with her, and no mention is made of her pucelage, and many other exceptions may be made, which I do not recollect at present.

But when there is nothing, wherefore the appeal can be declined, if the appellee shall be condemned by the country, let him without any redemption lose his eyes and his testicles, for the reason above said, unless it be that the woman so deflowered asks for him to be her husband before judgment is rendered, because this is only in the discretion of the woman, not of the man, for if this were in the discretion of the man, this inconvenience might follow, that a serf or ignoble man might perpetually defile a noble and gentle woman through the

4.  
If the appellee be convicted by the country, what punishment follows.

& in opprobrium generis sui ducere in axorē. Sed esto quòd vir raptor sit nobilis, & fœmina quam rapuit ignobilis, nūquid etiam erit in electione fœminæ corruptæ, eligendi & nubēdi viro nobili vel non? quia illud idem (ut videtur) sequeretur inconueniens, ex parte viri nobilis. Respōdeo, q̄ sive vir nobilis sive ignobilis, fœmina nobilis sive ignobilis sit, voluntas semper erit in fœmina & electio, quia q̄ in fœmina est voluntarium, in viro erit necessariū, ut membra sua redimat ex necessitate. Cū igitur mulier habeat electionem, et spreto iudicio petat ipsum in virum, conceditur ei ex gratia regis, ob favorem matrimonii.

f. 148 b. Si autem iudicium elegerit fœmina, facta executione iudicii de corruptore, pcedat appellum versus eos, qui appellati sunt de fortia. Possunt enim esse plures in fortia, sed tamen unus tantū tenebitur de corruptione, licet plures teneri possunt de concubitu. Et cū ibi diversa sunt facta, videtur quòd in utroq, facto sequi non deberet consimilis pœna, quia corrumpere virginem, & concumbere cum corrupta, non sequitur utrumq, factum eadem pœna, quod quidem verum est, sed non nisi ppter fortiam, quæ ita convicta<sup>1</sup> est primo facto de corruptione, et tunc sic fiat appellum versus appellatos de fortia.

5.  
De appel-  
latis de  
fortia.

Eadem A. appellat C. quòd eodem die, eodem anno &c. quo prædictus B. et eadem hora dum idem B. abstulit pucellagium suum, fuit idem C. in fortia, ita quòd tenuit eam dum idem B. abstulit ei pucellagium suum, vel quòd concubuit cum ea postquam &c. vel fuit in consilio & auxilio quocunq, et quòd hoc fecit nequiter, & in felonia, offert probare versus eum, sicut curia consideraverit, & quo casu, poterit appellatus per

<sup>1</sup> "conjuncta est," MS. Rawl. C. 160.

occasion of a single pollution, and make her his wife to the disgrace of her family. But let it be that the ravisher is noble and the woman whom he has ravished is ignoble, shall it be at the choice of the ignoble woman to elect and to be married to a noble man or not? for the same inconvenience as it appears would follow on the part of the noble man. I answer that whether the man be noble or ignoble, and the woman noble or ignoble, the will and the choice will always rest with the woman, because what in the woman is voluntary, will be in the man necessary, that he should redeem his members from necessity. When therefore the woman has the choice, and not valuing a sentence she asks for him as her husband, it is conceded to her through the grace of the king and in favour of matrimony. But if the woman has claimed a sentence, judgment having been executed against the deflowerer, let the appeal proceed against those who are appealed as accessories. For there may be several accessories, but only one shall be liable for deflowering her, although several shall be liable for having connection with her. And since the acts are different, it seems that the like punishment should not follow each act, because to deflower a virgin and to have connection with her after she has been deflowered, the same punishment does not follow each act, which is true, but only on account of one being accessory, for the conviction must first take place for the deflowering, and then the appeal may be made against those who are appealed as accessories. f. 148 b.

The said A. appeals C. that on the same day, in the same year &c. on which the aforesaid B. and at the same hour at which the said B. took away her pucelage, the said C. was an accessory, inasmuch as he held her whilst the said B. took away her pucelage, and that he had connection with her afterwards &c. and was of counsel and aid to him in some way or other, and that he did this wickedly and feloniously, she offers to prove against him, as the court shall think fit, and in which case the appellee

5.  
Concern-  
ing those,  
who are  
appealed  
as acces-  
sories.

patriam deliberari vel convinci, licet principalis damnatus extiterit.

## CAP. XXIX.

1.  
In quibus  
mulier  
habet  
appellum.  
Magn.  
Cart. c. 34.  
Britton,  
i. ch. xxiv.  
§ 7.  
Fleta, 53.  
Glanville,  
li. 14. c. 3.

In quib<sup>9</sup> casib<sup>9</sup> fœmina appellum habeat videndū est, & sciendum quòd non nisi in duobus casibus,<sup>1</sup> p quod<sup>2</sup> alicui lex apparens debeat adjudicari, s. non nisi injuria & violentia corpori suo illata, sicut de raptu, ut prædictum est. Item & de morte viri sui interfecti inter brachia sua, et non alio modo. De morte viri sui sic fiat appellum.

2.  
De appello  
de morte  
viri sni.

A. quæ fuit uxor B. appellat C. quòd cùm D. vir suus esset tali loco, tali hora, tali die, tali anno, venit idem C. cum vi sua, et nequiter & in felonia &c. ut suprà, occidit ipsum B. virum suum inter brachia sua, & quòd hoc fecit nequiter et in felonia, offert &c. ut suprà. Eadem A. appellat E. quòd eodem loco, eodem die, eodem anno &c. venit idem E. cum prædicto C. et nequiter, et in felonia, tenuit ipsum B. virum suum, dum idem C. illum B. occidit inter brachia sua. Et quòd hoc fecit nequiter, et in felonia &c. offert pbare &c. Et sic eodem modo versus plures et de pluribus factis. Et si ille de facto captus fuerit super factum cum cultello cruentato, non erit ulterius inquirendum, dum tamen de hoc constiterit p testimonium pborum virorum. Sed quid magis operatur appellum mulieris, licet secta benè facta fuerit, quàm secta regis, si appellum ceciderit vel suspitio oriatur p indictamentum, cùm in utroque casu recurratur ad patriam, videtur quòd idem sit quoad utrumq, nisi tantùm in hoc, quòd secta regis quandoq, remittitur de gratia, vel cum

<sup>1</sup> "casibus," omitted MS. Rawl. C. 160.

<sup>2</sup> "per quos," *ibid.*

may be delivered or convicted by the country, although the principal party has been condemned.

## CHAPTER XXIX.

We must see in what cases a woman has an appeal, and it is to be known that there are only two cases, wherefore apparent law ought to be adjudicated to any woman, namely only in cases of injury and violence inflicted on her body, as in a case of rape, as aforesaid. Likewise concerning the death of her husband slain within her arms, and in no other way. Concerning the death of her husband let the appeal be thus.

A. who was the wife of B. appeals C. that when D. her husband was in such a place, at such an hour, on such a day, in such a year, the said C. came with violence and wickedly and feloniously &c. as above slew B. her husband within her arms, and that he did this wickedly and feloniously she offers &c. as above. The said A. appeals E. that in the same place, on the same day, in the same year &c. the said E. came with the aforesaid C. and wickedly and feloniously held B. her husband whilst the said C. slew him within her arms. And that he did this wickedly and feloniously &c. she offers to prove. And so in the same way against several, and concerning several acts. And if the principal shall have been taken in the act with a blood-stained knife, no further inquiry need be made, provided that this has been ascertained by the testimony of honest men. But in what respect does the appeal of the woman operate more, although her suit has been well conducted, than the suit of the king, if the appeal fail or suspicion arise through the indictment, since in either case recourse is had to the country? It appears that it is the same as regards both, except only in this respect, that the suit of the king is sometimes given up through grace or with cognisance of the

1.  
In what  
things a  
woman has  
an appeal.

2.  
Of an ap-  
peal con-  
cerning  
the death  
of her  
husband.

causæ cognitione, quod quidem non fieret, si mulier benè sequeretur.

## CAP. XXX.

f. 149. Contingit quandoq, q appellati de morte hominis,  
 1. plaga, roberia, vel alia feloniam, p negligentiam vicecom-  
 De appel- mitis & coronam, attachiandi sunt, & ideo ad querelam  
 latis at- appellantium fiat bre dñi regis de attachiando eos, quod  
 tachiandis. sint coram iustis in hac forma.

2. Rex vic. salutem. Si A. fecerit te securum de cla-  
 Breve de more suo psequendo, tunc attachiari facias B. p corpus  
 attachi- suum, q sit coram iustis nostris ad primam assisam, cum  
 ando. in partes illas venerint, responsur<sup>2</sup> eidem A. de morte  
 C. patris, matris, fratris vel sororis, vel alterius paren-  
 tis, vel domini sui, unde eum appellat. Et habeas ibi  
 hoc breve. Teste &c. Si verò de pace regis infracta,  
 sicut de pace & plagis, pace & mahemio, pace & robe-  
 ria, pace & raptu virginum. & hujusmodi, tunc fiat  
 breve in hac forma.

3. Rex vic. salutem. Si A. fecerit te securum &c. tunc  
 Aliud breve pone p vadium & salvos plegios B. quod sit coram  
 ad idem de just. nostris ad primam assisam &c. responsurus eidem  
 eadem. A. de pace nostra infracta, unde eum appellat. Et  
 habeas ibi nomina plegiorum & hoc breve. Teste &c.  
 Si autem placuerit domino regi, q hujusmodi appella-  
 quæ attachiati<sup>1</sup> fuerunt in com usq, ad adventum iustis,  
 de morte hominis vel de pace domini regis infracta,  
 veniant coram seipso vel iustitiariis suis de banco, tunc  
 fiat breve in hac forma de summonendo appellum.

<sup>1</sup> "attachiata," is the correct reading. The word is contracted in MSS.  
 Rawl. C. 160 and 159.



cause, which indeed would not be, if the woman should sue properly.

## CHAPTER XXX.

It happens sometimes that appellees for the death of a man, or for wounds, or for robbery, or some other felony, through the negligence of the viscount or of the coroner, are to be attached, and therefore upon the complaint of the appellors let a writ from the lord the king issue for attaching them before the justices in this form. f. 149.

The king to the viscount greeting. If A. has given you security for pursuing his complaint, thereupon cause B. to be attached by his person, that he be brought before our justices at the first assise, when they shall come into those parts, in order to answer to the said A. concerning the death of C. his father, mother, brother, or sister, or other relative, or his lord, wherefore he appeals him. And have thereat this writ. Witness &c. But if it be concerning a breach of the peace of the king, as concerning peace and wounds, peace and mayhem, peace and robbery, peace and the rape of virgins, and such like, then let a writ issue in this form. 1.  
Of attaching appellees.

The king to the viscount greeting. If A. has given you security &c., then place B. under bail and safe pledges that he shall appear before our justices at the first assise &c., in order to answer to the said A. concerning a breach of our peace, wherefore he appeals him. And have there the names of the sureties and this writ. Witness &c. But if it shall have pleased the lord the king, that appellees of this kind, who have been attached in the county until the arrival of the justices for the death of a man or for a breach of the king's peace, shall appear before the king himself, or before his justices of the bench, then let a writ issue in this form to summon the appeal. 2.  
A writ of attachment.

The king to the viscount greeting. If A. has given you security &c., then place B. under bail and safe pledges that he shall appear before our justices at the first assise &c., in order to answer to the said A. concerning a breach of our peace, wherefore he appeals him. And have there the names of the sureties and this writ. Witness &c. But if it shall have pleased the lord the king, that appellees of this kind, who have been attached in the county until the arrival of the justices for the death of a man or for a breach of the king's peace, shall appear before the king himself, or before his justices of the bench, then let a writ issue in this form to summon the appeal. 3.  
Another writ to the same concerning the same.

4. Rex vic. salutem. Præcipimus tibi, q venire facias coram nobis vel just. nostris apud Westm̃ appellum, quod est in comitatu tuo inter A. appellantem & B. appellatum de morte talis, vel de roberia, vel alia felonia, & pace nostra infracta, unde idem B. appellat ipsum B., & pone p vadium & salvos plegios pdictum B. quòd sit coram nobis vel justit̃ nostris ad prædictum terminum, ad respondendum eidem A. de p̃dicto appello. Et habeas ibi nomina plegiorum, & hoc breve. Teste &c. Et fiat tale breve, si hoc sit ad instantiam appellantis, si autem ad instantiam appellati, tunc variatur in hoc, quòd ubi dicitur, pone per vadium & plegios, dicatur, summoneas per bonos summonitores p̃dictum A. appellantem &c. scilicet quòd sit &c. ad sequendum appellum suum versus prædictum B. si voluerit. Si autem vic. mandaverit q appellatus non sit inventus, sed quòd se subtraxerit, tunc præcipiatur (ut priùs) q attachiet eum, si inveniatur, si autem nō, q faciat eum interrogari de cōm in cōm, donec p legem terræ utlagetur, licet nullus sequatur, p tale breve.

5. Aliud breve ad idem de eodem, et nisi inveniatur, quod utlagetur et interrogetur de com. in com. Rex vic. salutem. Præc. tibi sicut aliàs tibi præceperimus,<sup>1</sup> quòd ponas p vadium & salvos plegios B., vel q habeas corpus B. quem A. in curia nostra coram nobis vel justitiariis nostris apud Westm̃ appellat de roberia & plagis, vel mahemio & pace nostra infracta, si inveniatur, ad respondendum eidem A. de appello illo, & si non inveniatur, tunc facias eum interrogari de cōm in cōm, donec p legem terræ, & secundum consuetudinem regni nostri utlagetur, eo non obstante q nullus sequitur. Teste &c. Et sciendum quòd in hoc casu non erit necesse q alius sequatur, quia hæc est

<sup>1</sup> "præcepimus." MS. Rawl. C. 160.

The king to the viscount greeting. We enjoin you <sup>4.</sup> that you cause to appear before us or our justices at Westminster the appeal, which is in your county between A. as appellor and B. as appellee, concerning the death of such an one, or concerning a robbery or another felony or a breach of our peace, whereof the said A. appeals the said B.; and place the aforesaid B. under bail and sufficient sureties, that he shall appear before us or our justices at the aforesaid term, to answer to the said A. concerning the aforesaid appeal. And have there the names of the sureties and this writ. Witness &c. And let such be the writ, if it be at the instance of a party, but if at the instance of the appellee, then let it be varied in this respect, that where it is said, place under bail and sureties, it should be said, summon by good summoners the aforesaid A. the appellor &c. forsooth that he be &c. to pursue his appeal against the aforesaid B. if he wishes. But if the viscount shall send that the appellee has not been found, but that he has withdrawn himself, then let it be enjoined (as before) that he should attach him, if he should be found, but if not, that he should cause him to be sought for from county to county, until he shall be outlawed by the law of the land, although no one should sue him, through a writ of this kind.

The king to the viscount greeting. We enjoin you, as we at other times have enjoined you, that you place under bail and sufficient sureties B., or that you detain the person of B. whom A. appeals in our court before us or our justices at Westminster concerning robbery and wounds and mayhem, or a breach of our peace, if he should be found, to answer to the said A. concerning that appeal; and if he should not be found, that you cause him to be sought for from county to county, until he be outlawed according to the law of the land and the custom of our realm, notwithstanding that no one pursues him. Witness &c. And it is to be known that in this case it will not be necessary, that another should pursue

A writ for causing the appeal to come before the justices.

5. Another writ to the same about the same, and unless he be found, that he be outlawed, and sought for from county to county.

secta regis p contemptis, eq non obstante q nullus sequatur. Si autem ante utlagationem venerit & reddiderit se prisonæ domini regis, vel si vic. eum ceperit, detineat eum in prisona, donec rex ei aliud præceperit. Aliquādo tamē, licet prisonæ, se non reddiderit, tamen differri poterit utlagaria, si sint aliqui, qui manuceperint eum de habendo eum coram domino rege vel justit, dum tamen hoc sit ante quintū cōm, & tunc fiat tale breve.

6. Rex vic. salutem. Si duodecem liberi & legales homines de cōm tuo manuceperint corā te de habendo coram nobis vel justitiariis nostris tali die B. ad standum recto de appello, quod A. in eadem curia nostra &c. fecit versus eum de morte C. avunculi sui, vel alterius talis, tunc appellum illud venire facias coram nobis, vel justitiariis nostris &c. ad prædictum diem, & dic prædicto A. quod tunc sit ibi coram &c. appellum suum versus eundē B. psecuturus si voluerit, & habeas ibi nomina pdictorū duodecem summonitorum & hoc breve. Teste &c. Si autem appellum, secundū quod prædictum est, fuerit in comitatu, fiat aliud breve de summonēdo appellum coram domino rege in hac forma.

7. Breve de summonendo appellum coram domino rege. Rex vic. salutem. Præc. tibi quod appellum unde B. attachiatus est in cōm tuo p morte C. unde A. eum appellat, venire facias coram nobis &c. tali die sicut attachiatus est veniendī coram justitiariis nostris ad primam assisam, cū in partes illas venerint. Et habeas &c. Teste &c. Si autem appellum factum fuerit (secundū quod prædictum est) immediate coram ipso

him, because this is the suit of the king for contempt, notwithstanding that no one sues him. But if before outlawry he should come and surrender himself to the prison of the lord the king, or if the viscount should have taken him, let him detain him in prison, until the king shall otherwise direct him. Sometimes, however, although he shall not have surrendered himself to prison, the outlawry may be deferred, if there be certain persons, who will be sureties for him to present him before the lord the king or his justices, provided however this be done before the fifth county court, and then let a writ of this kind issue. f. 149 b.

The king to the viscount greeting. If twelve free and loyal men of your county have become sureties before you to present before us or our justices on such a day B., to answer in court concerning an appeal which A. has made in our said court &c. against him concerning the death of C. his uncle, or another such relative, then cause that appeal to come before us or our justices &c. on the aforesaid day, and say to the aforesaid A. that he should be present &c. to prosecute, if he wishes, his appeal against the said B., and have there the names of the aforesaid twelve summoners and this writ. Witness &c. But if the appeal, according to what has been said above, has been in the county, let another writ issue for summoning the appeal before the lord the king in this form.

The king to the viscount greeting. We enjoin you, that you cause to come before us an appeal, whereof B. has been attached in your county concerning the death of C., whereof A. appeals him, that you cause him to come before us &c. on such a day, like as he has been attached to come before our justices at the first assise, when they shall have come into those parts, and have &c. Witness &c. But if the appeal has been made as aforesaid immediately before the king himself or his

6.  
A writ,  
that he be  
delivered  
up by his  
bail.

7.  
A writ for  
summon-  
ing the  
appeal  
before the  
lord the  
king.

rege vel justitiariis suis de banco, tunc fiat breve de attachiando appellatum de facto in hac forma.

8.  
Breve, si  
appellum  
factum  
fuerit im-  
mediate  
coram  
rege.

Rex vic. salutem. Si A. fecerit te securum de clamore suo prosequendo, tunc pone p vadium & salvos plegios B. & C. quòd sint coram &c. tali die ad respondendum eidem A. de morte D. patris vel alterius, unde eos appellat, vel de pace & plagis, vel aliis feloniiis superius nominatis, & habeas ibi nomina plegiorum & hoc breve. Et ad diem illum poterunt attachiati se essoniare, nisi hoc sit pro morte hominis, vel alio crimine majori. Si autem ad diem nō venerint, nec se essoniaverint, & vic. miserit breve & nomina plegiorū, tunc appellante se liti offerente, attachientur p meliores plegios, & tunc in fine q habeat eorum corpora, & observetur ordo attachiamenorum (ut infrā) de psonalibus actionibus, nisi justitiiarii aliud duxerint statuendū p qualitate delicti. Et si tunc se subtraxerint, exigātur ut suprā, & plegii omnes ej<sup>9</sup> in misericordia, si autē appellatos pduxerint ad diē suum, plegii quieti erunt de plevina, nisi gratis velint eos sub eadē plevina retinere, si nihil aliud plegiaverint nisi tantū habendi eum: non enim sunt plegii q appellati respondeant vel se defendant nisi velint, aliud tamen esset, si essent plegii de psequendo. Si autem cū appellum semel fuerit in cōm, & positum coram rege vel just. & de verbis appelli contentio habeatur, tunc p̄cipiatur quòd fiat recordum in comitatu de verbis appelli per hoc breve.

justices of the bench, then let a writ issue for attaching the appellee of the fact in this form.

The king to the viscount greeting. If A. has given you security to pursue his complaint, then place B. and C. under bail and sureties, that they should appear before &c. on such a day to answer to the said A. concerning the death of D. his father or other relative, whereof he appeals them, or concerning peace and wounds, or other felonies above named, and have there the names of the sureties and this writ. And on that day the attachees may essoin themselves, unless it be for the death of a man or another great crime. But on that day, if they should not have come, nor essoined themselves, and the viscount has sent the writ and the names of the sureties, then upon the appellor presenting himself to carry on the suit, let them be attached by better sureties, and then in the end that he should present their persons, and that the order of attachments be observed (as below) concerning personal actions, unless the justices think that something otherwise should be ordered according to the quality of the offence. And if then they shall have withdrawn themselves, let them be required as aforesaid, and let all his sureties be amerced, but if they shall have produced the appellees on their own day, the sureties shall be acquitted of their obligation, unless they wish gratuitously to retain them under the same obligation, if they have undertaken nothing else than solely to produce him: for they are not sureties that the appellees shall answer or defend themselves, unless they are willing, it would, however, be otherwise if they were sureties for the prosecution. But if, when the appeal has been once in the county court, and afterwards placed before the king or his justices, and a contention has arisen concerning the words of the appeal, then let it be enjoined, that a record be made in the county court concerning the words of the appeal, by this writ.

s.  
A writ, if  
the appeal  
has been  
made im-  
mediately  
before the  
king.

9. Rex vic. salutem. Præcipimus tibi, quòd coram te Breve vice- & coram custodibus placitorum coronæ nostræ in pleno comiti de faciundo cōm tuo, recordari facias appella, unde A. appellat B. recordum de pace nostra infracta, qualiter & per quæ verba in comitatu idem A. fecit appella sua, & utrum appella fecit in coram cus- illud habeas coram no- todibus. bis vel justitiariis nostris apud Westm̃ tali die sub sigillo tuo & sigillis prædictorū custodū placitorū coronæ nostræ, & per duos ex illis qui recordo illi interfuerint, & habeas ibi hoc breve. Teste &c. Item aliud de eodem si vic. debeat habere recordū & debeat facere venire duodecē & iii. villatas ad certificandum justitiariis de morte alicujus.

f. 150.  
10.  
Aliud  
breve de  
eodem  
vicecomiti.

Rex vic. salutem. Præcipimus tibi, quòd omni occasione postposita, sis coram just. nostris apud Westm̃ ad talem terminū, & ibi habeas recordū de appello q factum fuit in cōm tuo inter A. appellantē & B. appellatū de morte C. fratris ipsius A. & corā eisdem just. venire facias ad p̃dictum terminū duodecē liberos & legales homines de cōm tuo de pximo visneto p quos &c. & qui p̃dictos A. & B. aliqua affinitate non attingant, & p̃tereā de quatuor pximis villatis, de qualibet villata sex homines legales & p̃positū, ad certificandū p̃fatos just. nostros de morte illa, & habeas ibi nomina p̃dictorum duodecem & hoc breve. Teste &c.

## CAP. XXXI.

1. Eodem modo, quo quis feloniam facere possit interficiendo alium, ita feloniam facere possit interficiendo seipsum, quæ quidem feloniam dicitur fieri de seipso. Si quis fecerit feloniam de seipso. Feloniam quidem facit de seipso, ut si quis reus fuerit



The king to the viscount greeting. We enjoin you, that before you and before the keepers of the pleas of our crown in your full county court, you cause to be recorded the appeal, whereof A. appeals B. concerning a breach of our peace, in what manner and by what words the said A. made his appeal, and whether he made the appeal in the hundred court or in the county court, and have that record before us or our justices at Westminster on such a day under your seal and the seals of the aforesaid keepers of the pleas of our crown, and by two of those who took part in that record, and have there this writ. Witness &c. Likewise another on the same subject, if the viscount ought to have a record, and ought to cause twelve [neighbours] and four townships to certify to the justices concerning the death of any person.

9.  
A writ to the viscount to make a record in the county court before the keepers of it.

The king to the viscount greeting. We enjoin you, that putting aside all excuse, you present yourself before our justices at Westminster at such a term, and there produce the record concerning the appeal, which was made in your county court between A. the appellor, and B. the appellee, concerning the death of C., the brother of the said A., and that you cause to come at the said term twelve free and loyal men of your county from the immediate neighbourhood, by whom &c., and who do not touch the aforesaid A. and B. by any affinity, and besides from the four nearest townships, from each township six loyal men and a provost to certify our aforesaid justices concerning that death. And have there the names of the aforesaid twelve and this writ. Witness &c.

f. 150.  
10.  
Another writ on the same subject to the viscount.

## CHAPTER XXXI.

In the same way, in which a person may commit a felony by killing another, so he may commit a felony by killing himself, which felony indeed is said to be committed against himself. He commits a felony against himself, as

1.  
If any one has committed a felony

alicujus criminis, ita q̄ capt⁹ fuerit p̄ morte hominis, vel cum furto manifesto, & cū utlagat⁹ fuerit, vel in aliquo scelere & maleficio deprehensus, & metu criminis imminentis, mortem sibi consciverit, hæredem non habebit: quia sic convincitur feloniam prius facta, sicut furtum, vel mors hominis, vel hujusmodi. Sed qui criminis rei postulati non sunt, vel in crimine deprehensi manus sibi intulerint, bona eorum fisco non vendicentur, non enim facti sceleritatem constat esse obnoxiam, sed conscientiae met⁹ in reo veluti pro confesso habeat. Et ideò si rei postulati fuerint, vel in scelere deprehensi, si seipsos interfecerint, bona ipsorum confiscentur, scilicet bona eorum qui reatum mortis sibi consciverint, ut si ejus criminis fuerint, quòd damnarentur morte vel deportatione. Qui autem se submerserint vel præcipitaverint ex alto, vel alio modo, tales hæredes habebunt, quia non convincitur feloniam, nisi præcedat aliquod crimen propter quod periculum mortis vel mēbrorum sustinere deberet. Si quis autem tædio vitæ vel impatientia doloris alicujus, seipsum interfecerit, successorem habere poterit, & talis non amittit hæreditatem, sed tantum bona ejus mobilia confiscentur: sed si quis sine causa manus sibi p̄ vim intulerit, per iram & malam voluntatem, ut cū alteri nocere vellet, & adimplere non posset quod voluit, seipsum interfecerit, puniendus est, & successorem non habebit, quia convincitur & punitur feloniam, quā in psonā alteri⁹ facere pposuit, quia qui sibi ipsi non parcat, multo min⁹ aliis parceret, si facultatem haberet. Sed de furioso quid dicetur qui rationem non habet? & de mente capto, & frenetico, vel de infan-

if a person should be accused of any crime, so that he should have been captured for the death of a man, or with manifest theft, and when he has been outlawed or detected in any wickedness and misdeed, and through fear of imminent accusation, has brought death on himself, he shall not have an heir. For by such means he is convicted of the felony previously committed, such as theft, or the death of a man, or such like. But of those who are not charged as defendants in a crime, or being detected in a crime have destroyed themselves, their goods are not to be confiscated to the public treasury, for it is not evident that the wickedness of the act is established, but the fear of conscience in the party accused may be taken as a confession. And therefore if they have been challenged as defendants, or have been detected in wickedness, if they have slain themselves, let their goods be confiscated, that is the goods of those who have brought upon themselves the guilt of death, as if they were guilty of a crime for which they would be condemned to death or banishment. But those who have drowned themselves or precipitated themselves from on high or in some other way, such persons shall have heirs, because felony is not proved in their case, unless some crime precedes, wherefore he ought to be in peril of his life or of his limbs. But if any one from weariness of life or impatience of pain has slain himself, he may have a successor, and such a person does not lose his inheritance, but let his movable goods only be confiscated, but if a person has laid violent hands upon himself without any cause, through anger or ill-will, as when he wished to hurt another, and could not fulfil what he wished, he slew himself, he is to be punished, and shall not have a successor, because the felony which he purposed to commit against the person of another, is convicted and punished, because he who does not spare himself, would much less spare others, if he had the means. But what shall be said of a madman, who has not reason, and of an insane person and a

against  
himself.

tulo, vel si ille qui laborat in acuta infirmitate seipsum submerserit vel interfecerit, quæritur an talis feloniam faciat de seipso? videtur quòd non, nec hæreditatem forisfaciunt nec catalla, eò quòd sensu carent et ratione, & non magis quàm brutum animal injuriam facere possunt nec feloniam, cùm non multùm distent à brutis, secundùm quod videri poterit in minori, qui, si alium interfecerit in minori ætate, judicium non sustineret: & hæc vera sunt quòd furiosus non tenetur, f. 150 b. nisi hoc fecerit simulato furore, cùm dilucidis gaudeat intervallis. De submersis & oppressis & p infortuniū mortuis patet suprà. Sed si quis seipsum suspēderit, non ppter hoc exhæredantur hæredes, secundùm quosdā, nec uxor dotē amittat, nisi in casu ut suprà, quia feloniam de seipso facta convinci non poterit.

## CAP. XXXII.

1. Inter alia placita coronæ non est omittendum de actione furti, & de qua oritur appellum, quamvis in diversis curiis aliquando terminetur, sicut in comitatu & in curiis baronū, & aliquando in majori curia ipsius regis. Inprimis igitur videndum est, quid sit furtum, & quot ejus species. Et sciēdum, quòd furtum est secundùm leges contractatio rei alienæ fraudulenta, cum animo furandi, invito illo dño cujus res illa fuerit. Cùm animo dico, quia sine animo furandi non committitur. Est etiam quasi furtum, rapina, quæ idem est quantum ad nos q robberia, & est aliud gen<sup>o</sup> contractationis contra voluntatem domini, & similis

De actione  
furti, et  
quid sit  
furtum.

Inst. IV.  
t. 1.

Azo in  
Cod. VI.  
Rubr. 2.

frenetic or childish person, or if a person, who is suffering from an acute infirmity, has drowned himself or slain himself, it is asked whether such a person commits felony against himself? it seems not, nor do they forfeit their inheritance nor their chattels, by reason that they are without sense and reason, and no more than a brute animal can they do an injury nor a felony, since they do not differ much from brutes, according to what may be seen in a minor, who, if he should slay another minor under age, would not undergo judgment; and these things are true that a mad man is not liable, unless he has done this under pretence of madness, when he has lucid intervals. Concerning the drowned and the suffocated and those who die from accident it appears above. But if a person has hanged himself, his heirs are not disinherited for that reason according to some, nor does his wife lose her dower, except in the case above mentioned, because a person cannot be convicted of felony committed against himself. f. 150 b.

## CHAPTER XXXII.

Amongst other pleas of the crown we must not omit treating of the action for theft, and concerning which an appeal arises, although it is sometimes terminated in different courts, as in the county court and in the courts of barons, and sometimes in the greater court of the king himself. We must therefore in the first place see what is theft, and how many species of it there are. And it is to be known, that theft is according to the laws the fraudulent handling of another person's property, with the intention of stealing, against the will of the lord whose property it is. I say with the intention, for without the intention of stealing it is not committed. There is also a kind of theft, rapine, which is the same with us as robbery, and it is another kind of handling against the will of the owner, and a like punishment

1.  
Concern-  
ing the  
action for  
theft, and  
what is  
theft.

poena sequitur utrumq, delictum, & unde prædo dicitur fur improbus: quis enim magis contractat rem aliquā invito domino, quàm ille qui vi rapit?

2.  
Quod  
species  
furti.

Species autem furti sunt duæ, quia aliud publicum aliud privatum. Videlicet manifestum et non manifestum. Non manifestum est, ubi quis suspectus est de latrocinio per famam patriæ, p indictamentum et rectum, et ubi graves præsumptiones faciunt contra ipsum. Sed si seysitus non inveniatur de aliquo latrocinio, non habet quis potestatem inquirendi, nec pcedendi contra ipsum ad inquisitiones, nisi ipse dñs rex in curia sua. Sed de hac specie nihil ampliùs ad psens, quia superiùs p præcedentia perpendi poterit, quid in hac parte sit agendū. Et si coram ballivis vel coronatoribus furtum cognoverit, tamen non teneatur ex tali confessione sine seysina, licèt cum seysina recordum haberent. Furtum verò manifestum est, ubi latro deprehensus est seysitus de aliquo latrocinio, scilicet hondhabende & bacberende<sup>1</sup> & insecutus fuerit p aliquem cujus res illa fuerit quæ dicitur sakaburth,<sup>2</sup> & si sine secta cognoverit se inde esse latronem coram vic. vel coronatore vel serviente domini regis, cum testimonio bonorum & pborum hominum, extunc furtum dedicere non possit, quia tales in hoc habent recordum. Et (secundùm quosdam) illud idem erit, etiam sine seysina. Cùm autem sit qui sequatur, possit ab initio agere civiliter vel criminaliter utrum vo-

Britton, i.  
ch. xxx.  
§ 6.  
Fleta, 54.

<sup>1</sup> "hondhabende et bacberende," MS. Rawl. C. 160.

<sup>2</sup> "qui dicitur sachabor," MS.

Rawl. C. 160; "qui dicitur secta-tor," MS. Rawl. C. 159; "qui dicitur sachaber," MS. Godebold.

follows each offence, and hence a robber is called a hardened thief, for who handles anything more against the will of the owner, than he who carries off by violence ?

But there are two kinds of theft, because one is public and the other private, to wit, manifest and not manifest. Non-manifest theft is where one is suspected of robbery by report of the country, by an indictment and trial, and where grave presumptions make against him. But if he be not found seysed of any robbery, no one has the power to make an inquisition nor to proceed against him with a view to an inquisition, except the lord the king in his own court. But concerning this kind nothing more at present, because it can be ascertained through what has preceded, what is to be done in this part. And if he has acknowledged the theft before the bailiffs and the coroners, nevertheless he is not bound by such confession without seysine, although with seysine they would have a record. But manifest theft is where the robber is detected whilst seysed of the thing stolen, to wit, hand having and back bearing,<sup>1</sup> and he is being pursued by some person to whom the thing belongs, who is called sakaburth,<sup>2</sup> and if without a sect he has acknowledged himself to be a robber before the viscount or a coroner or a serjeant of the lord the king, with the testimony of good and honest men thereupon, he may not gainsay the theft, because such persons have a record in this matter. And (according to some) the same thing will take place, even without seysine. But if there is any one who pursues, he may from the commencement proceed civilly or criminally as he pleases, for he may

2.  
Concern-  
ing an  
appeal for  
robbery.

<sup>1</sup> "handhabbynde et backber-  
" ende." Britton, l. i. ch. xxx.  
§ 3.

<sup>2</sup> "sakebere" is the phrase in  
Britton, l. i. ch. xvi. § 1, and ch.  
xxx. § 3. The meaning of the  
word is obscure. Grimm, in his

Deutsche Rechts Alterthümer, 783,  
considers the old German "Sachi-  
" baro" to have been a kind of  
local legal adviser, whose office was  
superseded, when a regular judge  
came to be appointed. Bracton  
uses it here in quite another sense.

luerit: poterit enim rem suam petere ut adiratam p testimonium proborum hominum, & si cōsequi rem suam quamvis furatam.

3. Et si ille, qui seysitus fuerit in hoc ei non obtem-  
De appello  
de latroci-  
nio.  
peraverit, poterit accrescere & petere eam ut furatam,  
sed non è contrario, & dicere quòd ille qui tenet latro  
est, aut latronem scit nominare, & quòd in felonia, &  
furtivè & in latrocinio, & contra pacem domini regis  
cepit rem illam, & furtivè abduxit eam. Et q hoc  
f. 151. fecit furtivè, & in felonia, offert pbare versus eum per  
corpus suum, sicut curia regis consideraverit. Et ap-  
pellatus tunc defendat feloniam, latrocinium, & totum,  
vel p patriam vel p corpus, secundum electionem suam  
prout curia consideraverit.

4. Si autem elegerit se defendere p corpus, statim va-  
Si defendat,  
vadietur  
duellum.  
dieditur inter eos duellum, & appellatus det vadium  
defendendi, & appellans det vadium disrationandi, &  
sic terminabitur negotium,

5. Si autem pñā elegerit, tunc dicere poterit, q res, de  
Si appel-  
latus  
patriam  
elegerit.  
qua agitur, sua sit propria, & rationem ostendere, quare.  
Ut si equus fuerit, poterit dicere quòd ei pullona tus  
fuit, & quòd eum nutritiv p tantum tempus. Et si  
hoc per patriam testatum fuerit, liberabitur, nisi ille, qui  
appellat, docere poterit contrarium, videlicet docere  
poterit p patriam, & per visenetum suum, & per alia  
judicia certa, quòd ei pullonatus<sup>1</sup> fuit & q ipsum nu-  
trivit à juventute, & cum ex utraq parte sic produ-  
catur secta, pferatur illa, quæ major fuerit, & dignior,  
& magis veri similior. Et non refert utrum res, quæ  
ita subtracta fuit, extiterit illius appellantis propria  
vel alterius, dum tamen de custodia sua. Si autem  
pares sint in secta & testimonio, vocentur alii fideles

<sup>1</sup> "pulenatus," MS. Rawl. C. 160; "pullonetus," MS. Rawl. C. 159.



claim his own property as adjudged to him by the testimony of honest men, and so acquire possession of the thing, although stolen.

And if he who is seysed does not obey him in this, he may proceed further and claim the thing as stolen, but not contrariwise, and may say that he who holds the thing is a robber, or knows to name the robber, and that he has taken the thing feloniously and by theft, and by robbery, and carried it away by stealth. And that he has done this by stealth and feloniously he offers to prove by his body, as the court of the king shall think fit. And let the appellee thereupon defend the felony, the robbery, and the whole, either by the country or by his body, according to his election, according as the court shall think fit.

3.  
Concern-  
ing an  
appeal in  
robbery.

f. 151.

But if he shall elect to defend himself by his body, let battle be waged at once between them, and let the appellee give bail to defend himself, and the appellor give bail to deraign, and so let the business be determined.

4.  
If he de-  
fends, let  
battle be  
waged.

But if he has chosen the country, then he may say, that the thing, which is in dispute, is his own property, and show reason wherefore. As if it is a horse, he may say that it was foaled to him, and that he had fed it up to such time. And if this shall be testified by the country, he shall be set free, unless he who appeals can show the contrary, namely can show by the country, and by the neighbourhood, and by other certain judgments, that it was foaled to him, and that he has fed it from its youth, and when a sect of witnesses has been produced on either side, let that sect be preferred which is the more numerous and the more dignified, and the more trustworthy. And it is not of importance, whether the thing itself, which has thus been carried away, is the property of the appellant or of another, provided it was in his keeping. But if they are equal in their sects and their evidence, let other faithful men be called from the bor-

5.  
If the ap-  
pellee has  
chosen the  
country.

Britton,  
i. ch xvi.  
§ 3.  
Fleta, 55.

homines de confinio, qui nullam partium attigerint, & ille obtinebit, cum quibus ipsi concordēs fuerint, & sic terminabitur negotium. Si autem appellatus dicat rem illam esse suam & sibi esse venditam, vel donatam ab aliquo, tunc necesse erit, quodd illū vocet ad warrantum. Si autem warrantus præsens fuerit, vel si habere possit eum ad certum diem, habeat eum, ut inter eos procedatur de warrantia; si autem eum habere non possit, tunc alio modo pcedendum erit. Cū autem warrantus præsens fuerit, aut statim warrantizat, aut defendat q̄ ei warrantizare non debet, & negat. Et quo<sup>1</sup> casu, si negaverit, oportet q̄ appellatus, qui in seysina fuerit, hoc disrationet versus eum p̄ corpus suum, & sic perveniri poterit inter eos ad duellum. Si autē warrantizaverit, tunc statim, cū tradita res fuerit warranto, liberabitur ille, qui warrantum vocavit, & ille qui rem vēdicat tunc loquatur versus eum, qui rem warrantizavit, per verba appelli, sicut locutus fuit primò versus primum seysitum, & sic vocare poterit warrantus de warranto in warrantum, plures sicut unus, per auxilium curiæ & per breve. Si quis verò cū warrantum vocaverit & habere non possit sine auxilio curiæ, tunc fiat breve in hac forma vicecomiti.

6.  
Breve de  
faciendo  
venire  
warrantum  
per aux-  
ilium.

Rex vicecomiti salutem. Præcipimus tibi quodd tali die, tali anno regni nostri, & tali loco venire facias talem, apud comitatum talem, vel ad curiam talis apud talem locum, ad respondendum in eodem cōm vel in eadem curia tali, de warrantizatione unius equi furati, vel alterius rei quam ei vendidit, ut dicit, & unde idem talis in eodem comitatu, vel in eadem curia vocavit ipsum talem ad warrantum versus ipsum talem. Teste, &c. Si quis autem rem furatā emerit, cū illam

<sup>1</sup> "Et quo." The conjunctive particle "et" is omitted in MS. Rawl. C. 160.

dering lands, who have no affinity to the parties, and he shall prevail, with whom these men agree, and so shall the business be terminated. But if the appellee shall say, that the thing is his own and has been sold to him or has been given to him by a certain person, then it will be necessary to call him as a warrantor. But if a warrantor be present, or if he can produce him on a certain day, let him produce him, that proceedings may be taken concerning the warranty; but if he cannot produce him, then proceedings must take place in another way. But when a warrantor is present, let him forthwith warrant it, or let him defend himself that he ought not, and refuse to warrant it to him. And in which case, if he has refused, it is incumbent that the appellee, who is in seysine, shall deraign this against him by his body, and so they may arrive at a battle between them. But if he shall warrant it, then forthwith, when the thing has been handed over to the warrantor, he who has called the warrantor, shall be set free, and he who claims the thing must then plead against him, who has warranted it, by words of appeal, as he first pleaded against the first seysee, and so the warrantor may call warrantor after warrantor, several precisely as one by the aid of the court, and by a writ. But if, when one has called a warrantor, one cannot produce him without the aid of the court, then let a writ issue in this form to the viscount.

The king to the viscount greeting. We enjoin you, that on such a day, in such a year of our reign, and in such a place, you cause such an one to appear, at such a county court, or at the court of such an one at such a place, to answer in the said county court or in the said other court to such an one concerning the warranting of a stolen horse, or of some other thing which, as he says, he sold to him, and whereof the said so-and-so in the same county court, or in the same other court, has called him as a warrantor towards himself. Witness, &c. But

6.  
A writ to  
cause a  
warrantor  
to come in  
aid.

crederet esse legalem, tunc si warrantum non habuerit, distinguendum erit utrum illam emerit publicè, & in feria, & mercato, & nundinis, & coram ballivis & aliis probis hominibus, qui de hoc testimoniū phibuerint, & q tolnetum & consuetudines dederit: liberabitur talis emptor, cū rem restituerit vero domino, sed nihil restituatur ei de precio, quod solvit pro eadem re; si autem nihil horum habuerit, in periculo erit.

7. Intrat quandoq, in defensionem & warrantum aliquis malitiosè, & p fraudem & p mercedē, sicut cāpio & conductitius, q quidem si fuerit corā justitiariis detectum, non pcedatur ad duellum, sed p patriam inquiretur veritas, si talis mercedem acceperit vel non. Et si constiterit q sic, pedem amittat & pugnum, ut coram M. de Pateshul de termino Sancti Hillarii añ regis H. quarto in comitatu Essex de Elya Pigone campione conductitio. Est etiam furtū de re magna & re minima, & ideò habenda erit ratio, quæ vel qualis sit res, quæ furatur. Pro parvo enim latrocinio, vel p parva re, nullus Christianus morti tradatur, sed alio modo sic castigetur, ne facilitas veniæ aliis materiam præbeat delinquendi, et ne maleficia remaneant impunita. Et ideò secundū qualitatem rei furatæ et valorem, si fur convictus fuerit, aut morti tradatur, aut regnum abjuret vel patriam, comitatum, civitatem, burgum vel villam, aut fustigetur, et sic castigatus dimittatur.

8. Si verò furtum in manu, vel sub potestate alicujus inveniatur, tunc ille, in cujus domo vel potestate res

Si warrantum vocaverit per auxilium curiæ, breve de venire faciendo warrantum.  
Glanville,  
l. ii. c. 8.

8.  
Si furtum in manu

if a person has bought a stolen article, when he believed it to be legally purchasable, then if he cannot produce a warrantor, a distinction must be made whether he has bought it publicly and in a fair, or in a market, or in a booth, and in the presence of the bailiffs and other honest men, who can give testimony of the fact, and that he paid toll and customs: such a purchaser shall be set free, when he has restored the article to the true owner, but nothing shall be returned to him of the price, which he has paid for the same thing; but if he has none of these defences, he will be in peril. f. 151 b.

Sometimes a person undertakes the defence and the warranty maliciously and fraudulently and for a payment, as a champion and a hireling, which indeed if it be detected before the judges, let matters not proceed to battle, but let the truth be inquired into through the country, if such a person has received a payment or not. And if it be proved in the affirmative, let him lose his foot and his fist, as was adjudged before Martin de Pateshull, in the term of St. Hilary, in the fourth year of the reign of king Henry, in the county of Essex, concerning Elias Pigo, a hired champion. There is likewise theft of a great thing and of a small thing, and therefore regard must be had, what and of what quality the article is, which is stolen. Since for petty larceny or a petty article let no Christian be put to death, but let him be chastised in some other way, lest a facility of pardon should afford matter for delinquency, and lest offences should remain unpunished. And therefore according to the quality and value of the thing stolen, if a thief be convicted, let him be put to death, or let him abjure the realm, or the country, or the county, or the city, or the borough, or the vill, or let him be flogged and dismissed after such chastisement. 7. If he has called a warrantor by the aid of the court, a writ to make the warrantor come.

But if the thing stolen has been found in the hand or in the possession of any one, then let him in whose hand or possession the stolen thing has been found be liable, been found 8. If the thing stolen has been found

*alicujus furtiva inventa fuerit, tenebitur, nisi warrantum inven-*  
*inveniat. nerit, qui eum inde defendere possit.*

9.  
 Si uxor  
 teneatur  
 ex furto  
 viri.

Britton,  
 i. ch. xxv.  
 § 8.  
 Fleta, 56.

Uxor verò furi desponsata, non tenebitur ex facto viri, quia virū accusare non debet, nec detegere furtum suū nec feloniam, cū ipsa sui potestatem non habeat sed vir, consentire tamen non debet feloniam viri sui, nec coadjutrix esse, sed nequitia & feloniam viri impedire debet quantū potest. In certis verò casib<sup>9</sup> de furto tenebit, si furtū inveniat sub clavibus uxoris, quas quidē claves habere debet uxor sub custodia, & cura sua. Claves videl. dispēsæ suæ, archæ suæ, & scrinii sui. Et si aliquādo furtū sub clavibus istis inveniat, uxor cum viro culpabilis erit. Sed quid si res furtiva in manu uxoris inveniat, nunquid tenebitur vir? non, ut videtur, nisi ei expressè cōsenserit, vel cū rem ei warrantizaverit, cū ipsum vocaverit ad warrantū, & tūc consentisse psumitur, nisi expressè dissentiat, vel nisi de eo psumatur q̄ fidelis sit, eò q̄ societatem talis uxoris devitavit in quantū potuit.

10.  
 Si uxor  
 cum viro  
 convicta  
 fuerit.

Item quid erit, si uxor cum viro cōjuncta fuerit, vel confessa q̄ viro suo consiliū p̄stiterit & auxilium, nūquid tenebuntur ambo? imò, ut videtur, quia vir potest teneri p se, cū sit mal<sup>9</sup>, & uxor poterit esse bona & fidelis & liberari. Item uxor mala p se & vir fidelis, cū ergò uterq̄ possit esse malus p se & alter eorū bonus, ita poterit uterq̄ eorum simul & conjunctim esse malus sicut bonus. Solutio. Non igitur erit in omni casu uxor deliberanda ppter consilium, auxiliū

unless he can find a warrantor, who can defend him thereupon. in the hand of any person.

A wife however, who is the spouse of a thief, shall not be liable for the act of the man, because she ought not to accuse her husband, nor to disclose his theft or felony, since she has not any power over herself, but her husband has; she ought not however to consent to the felony of her husband, nor to be his confederate, but she ought, as far as she can, to impede the wickedness and felony of her husband. But in certain cases of theft she will be liable, as if the thing stolen is found to be under her keys, which keys the wife ought to keep under her own custody and care, the keys for instance of her store-room, her chest and her writing desk, and if at any time a thing stolen be found under those keys, the wife will be culpable with her husband. But if the stolen articles be found in the hand of the wife, will the husband never be liable? not, as it seems, unless he has expressly consented to it, but when he has warranted the article for her, when she has called him to warrant, he is then presumed to have consented, unless he has expressly disclaimed it, or unless there be a strong presumption in his favour that he is trustworthy, inasmuch as he has avoided as much as he could the society of his said wife. 9.  
If a wife be liable for the theft of her husband.

Likewise what shall happen, if the wife be an accomplice with the husband, or has confessed that she has given counsel and aid to her husband, shall they not both be liable? Yes, as it seems, for the husband may be liable by himself, when he is an evil man, and the wife may be good and trustworthy and may be set free: likewise the woman may be an evil woman by herself and the husband trustworthy; since therefore either of them may be evil by themselves, and the other one good, so each of them may be together and conjointly good or evil. The answer. It is not therefore in every case that the woman is to be set free, on account of her counsel, 10.  
If the wife has been convicted with her husband.

Britton,  
i. ch. xxv.  
§ 8.

& consensum, desicut sunt participes in crimine, ita erunt participes in pœna. Et licet obedire debeat viro, in atrocioribus tamen seu latrociniis ei non erit obediendum. Poterit quidem vir ligare & tenere, & uxor sponte & non coacta occidere, & ita (ut videtur) tenetur de maleficio uterq. De concubina verò, vel familia domus, non erit sicut de uxore. Ipsi verò accusare tenentur vel à servitio recedere, alioquin videntur consentire. Si verò mulier pro maleficio fuerit condemnata, differtur aliquando executio iudicii, postquam redditum fuerit iudicium, si prægnaus fuerit, donec peperit, sive ante delictum perpetratum conceperit sive post.

11.  
f. 152.  
Si civiliter  
prægnaus  
fuerit dam-  
nanda.  
Dig.  
XLVIII.  
tit. xix.  
§ 3.

Ad hoc facit F. de peñ L. prægnaus, ubi dicitur q prægnaus mulieris damnatæ pœna differtur<sup>1</sup> quoad pareat,<sup>2</sup> nec de eo quæstio habeatur, quamdiu prægnaus fuerit, & id est, non torqueatur.

### CAP. XXXIII.

1.  
De furto  
manifesto  
et proba-  
tore cog-  
noscente.

Cum furto manifesto deprehensus quandoq. sine aliqua pbatone cognoscit latrocinium & se esse latronem, vel cognoscit homicidium vel roberiam, vel q aliam feloniam fecerit, vel quòd utlagatus fuerit, vel gaolā fregerit, vel regnum abjuraverit, vel quid tale fecerit per quod secum suum portat iudicium. Et qui sic convicti secum portant iudicium, sicut finaliter condemnati, nullum habent appellum versus aliquem fidelem nec infidelē: quia omnino frangitur eorum baculus. Sed non erit ita de pbatore, quia licet crimen confes-

<sup>1</sup> "differatur," MS. Rawl. C. 160. | <sup>2</sup> "pariat," MS. Rawl. C. 160.



aid, or consent, according as they have been accomplices in the crime, they shall be partakers of the punishment. And although she is bound to obey her husband, in more atrocious acts however or larcenies she is not to obey him. For instance a husband may bind and hold a person, and the woman of her free will and under no compulsion may slay him, and so each as it appears is responsible for the offence. But as regards a concubine or the servants of a house, the case is not the same as with a wife, but they are bound to accuse or to withdraw from the service, otherwise they seem to be consenting parties. But if the woman has been condemned of the crime, the execution of the judgment is sometimes delayed after the judgment has been given, if she be pregnant, until she has brought forth, whether she has conceived before or after the perpetration of the offence.

With this the Digest "de poenis" and the Law beginning "prægnantis" accords, where it is said, let the punishment of a pregnant woman be deferred, nor let the question be applied to her whilst she is pregnant, in other words let her not be tortured.

11.  
f. 152.  
If according to the Civil Law a pregnant woman ought to be condemned.

#### CHAPTER XXXIII.

A person detected in a manifest theft sometimes without any proof acknowledges the larceny, and that he is the robber, or acknowledges the homicide or the robbery, or that he has committed some other felony, or that he has been outlawed, or has broken out of gaol, or has abjured the realm, or has done something wherefore he carries with him a judgment against himself. And those, who thus convicted carry with them a judgment, as finally condemned, have no appeal against any one, loyal or disloyal, for their staff is altogether broken. But it shall not be so with an approver, because although he has confessed the crime, nevertheless he is not on

1.  
Concerning manifest theft, and an approver who confesses.

sus fuerit, tamen propter hoc non est iudicatus. Poterit dominus rex, si voluerit, ei concedere vitam & membra, per sic quod patriā deliberaret à malefactoribus, per corpus vel per patriam, vel per fugam, secundum quod convenerit de numero & de modo. Appellare poterit quos voluerit de societate & latrocinio vel alia quacunque feloniam, dum tamen si sit aliquis fidelis & in franco plegio, & dñm habuerit qui ipsum advocaverit, & velit se ponere super patriam, si fidelis appellatus p patriam fuerit deliberatus, probatur infidelis quasi mendax & convictus condemnabitur. Si autem in decenna non fuerit, nec dominum habuerit qui advocet eum, & patriam recusaverit, fortè tunc, cum omnia bona ei deficiant, & p hoc par sit appellanti, pcedat inter eos duellū. Et eodem modo si ad appellū pbatoris posuerit se quis super pñiam de roberia vel latrocinio, vel alia feloniam ei imposita à pbatore, & à patria fuerit inde malè creditus, tunc cum sit par pbatori, pcedat inter eos duellū. Non enim habet felo vel latro cognoscēs vocē versus aliquē fidēlē, qui velit & possit se ponere sup patriā de fidelitate. Cum autē quis latrociniū vel aliā feloniam cognoverit, & pbator devenerit corā aliquib⁹ qui recordū habuerint de cognitione, aut pseverat in eadē voluntate corā just. aut non pseverat: si autē non pseveraverit, sed se retraxerit quandocunque, & recordū sit à vic. vel corōn, vel ab aliis qui recordū habent, q corā eis latrocinium cognovit, extunc habebitur pbator p convicto, & p cōdēnato, ppter cognitionē. Si autē in eodē pposito coram just. pseveraverit, ubi nunq se retraxerit, tūc corā eis suā de novo faciat cognitionem, & obliget se ad cōvincendū tot, quot appellaverit, ut habeat vitam & mēbra, ut p̄dict. est. Quod quidē ei concedere nemo potest nisi ipse rex, vel justitiarius suus de speciali pmissione, viva voce vel p breve suum quod tale est.

that account judged. The king may, if he so wills, grant him life and limbs, on condition that he should deliver his country from malefactors, by his body or by the country, or by flight, according as it has been agreed upon concerning the number or the manner. He may appeal whom he chooses of conspiracy and larceny or any other felony, provided however he be some one faithful and in frank-pledge, and he has a lord, who will avow him, and he is willing to put himself upon the country, if a faithful person so appealed shall be set free by the country, the faithless approver shall be condemned as a liar and be convicted. But if he be not in a tithing, nor has a lord, who will avow him, and he has refused to go to the country, by chance then when all his goods fail him, and thereby he is the peer of the appellor, a duel may take place between them. For a confessing felon or robber has not a voice against a faithful man, who is willing and able to put himself on the country concerning his fidelity. But when a person has confessed a robbery or other felony, and the approver has appeared before certain persons who have a record of confessions, he either perseveres in the same intention before the justices or he does not persevere : but if he does not persevere, but has withdrawn his statement, and a record is kept by the viscount or the coroner, or by others who have a record, that he confessed the robbery before them, thereupon the approver is [to be taken to be] convicted and condemned on account of his confession. But if he has persevered in the same story before the justices, where he has not withdrawn at all his statement, then let him make the confession again in their presence, and bind himself to convict as many persons, as he has appealed, that he may have his life and limbs, as aforesaid, which no one can grant to him except the king, or his justices with his special permission orally, or by his writ, which is as follows.

2. Rex just. salutem. Sciatis q concedim<sup>9</sup> vobis potestatem concedendi tali vitam & membra, qui coram vobis probator devenit, & latrocinium vel aliam feloniam cognovit, per sic, quod faciat duellum, ut convincat<sup>1</sup> quinq, vel tot, per corpus, vel per patriam, ad quod se obligavit coram vobis, & secundum quod nobis significastis, vel cum pluribus, si ad hoc ipsum inducere possitis. Teste &c. Et quo casu vic. attachiare debet omnes appellatos, & si in hoc negligēs extiterit, fiat ei hoc bre in hac forma.

3. Rex vic. salutem. Præc. tibi, q si aliquē habes latronē pbatorem in balliva tua, qui publicē confessus fuit latrocinium, vel aliam feloniam corā serviente nostro vel ballivo, vel ballivis, vel aliis pbis hominib<sup>9</sup>, & aliquos de societate appellaverit de latrocinio, roberia, morte hominis, vel alia felonia, tunc ipsos sine aliqua dilatione attachiari facias, secundū consuetud regni nostri, ad habendū eos corā nobis vel capitali justit nostro ad summonitionē nostrā, vel ipsi<sup>9</sup> capitalis justit nostri. Teste &c. Item aliud de eadē materia de capiēdo appellatos p pbatorem & pducendo coram justitiā.

4. Rex vic. salut. Præc. tibi, q sine dilatione capias A. quē B. (qui se cognoscit esse latronē) in curia nra coram just. &c. appellat de societate & latrocinio, vel alia tali felonia, & illū captū q citi<sup>9</sup> poteris ducas, vel venire fac. corā eis<sup>9</sup> just. nostris apud talē locū, ad respondendū eidem B. de societate & de morte hominis, roberia, & latrocinio, vel alia tali felonia, unde eum appellat &c. vel aliter. Præc. tibi, q sine dilatione capias A. & ipsum captum ducas corā justit &c.

<sup>1</sup> "vel convincat," MS. Rawl. C. 160; "et convincat," MS. Rawl. C. 159.

The king to the justices greeting. Know ye, that we grant to you the power of granting to such an one his life and limbs, who has come before you as an approver, and has made known a larceny or other felony, on these terms, that he does battle to convict five or so many by his body, or by the country, to which he has bound himself in your presence, and according to what you have signified to us, or with several persons, if you can induce him to this. Witness &c. And in which case the viscount ought to attach all the persons accused, and if he should be negligent in this respect, let a writ issue to him under this form.

2.  
A writ, whereby the king gives to the justices the power of granting to an approver his life and limbs.  
f. 152 b.

The king to the viscount greeting. We enjoin you, that if you have any robber or approver in your bailiwick, who has publicly confessed a larceny or other felony before our serjeant or bailiff or bailiffs, or other honest men, and has accused any of his confederates of larceny, robbery, homicide, or other felony, thereupon you cause them to be attached without any delay, according to the custom of our realm, to produce them before us or our chief justice at our summons, or at the summons of our chief justice himself. Witness &c. Likewise another writ on the same subject matter concerning the capturing of the persons accused by the approver, and the producing them before the justices.

3.  
A writ, that the viscount attach those, whom the approver has accused.

The king to the viscount greeting. We enjoin you that without delay you capture A., whom B. (who has acknowledged himself to be a larcener) accuses before our court, in the presence of our justices, of confederacy and larceny, or any other such felony, and bring him when captured as soon as you can, and cause him to come before our same justices at such a place to answer to the said B. concerning the confederacy and the homicide, robbery, or larceny or such other felony, whereof he accuses him &c. or otherwise. We enjoin you, that without delay you capture A., and bring him so

4.  
A writ to capture the persons accused by an approver, who confesses himself to be a larcener.

ad respondendū B. (cognoscenti se esse latronē) de societate latrocinii unde eum appellaverat, & tunc habeas ibi corā eisdē justitiariis sufficientē sectā de visincto tali, ad faciendā inquisitionem de p̄dicto tali, secundū cōsuetudinem regni n̄ri. Et habeas ibi hoc breve. Teste &c. Et posset huic breve bene adjungi, ut videtur: Et si idem talis p̄pter appellum se fortē subtraxerit, tunc facias illum interrogari de cōm in cōm, donec secundū legē terræ utlagetur. Et hoc fieri debet tantū ad sectam dñi regis sine alia secta, p̄pter p̄sumptionem appelli & p̄pter fugam. Cū autem appellatus p̄sens fuerit, p̄ponat p̄bator appellum suum in hæc verba.

## CAP. XXXIV.

1. A. de N. cognoscens se esse latronem, appellat B. de morte & societate & latrocinio vel roberia, vel morte hominis scilicet ita: quōd ipsi simul furati fuerunt talem rem apud talem locum, & ita quōd p̄dictus B. habuit ad partem suam tantum, vel sic: quōd ipsi simul venerunt ad domum talis, loco tali, vel in via vel alibi, & robbaverūt ei talem rem, & postquam robbaverint eum, eum interfecerunt, & ita quōd p̄dictus B. habuit tantum ad partem suam, & idem de receptamento scienter, & alia felonia; & hoc offert p̄bare versus ipsum p̄ corpus suum, sicut curia consideraverit. Et oportebit p̄batorem certam rem exprimere, & omnes circumstantias sine variatione & mutatione aliqua, & quōd cognoscat personam appellati cū fuerit in iudicium p̄ductus, quia si eum non

Cum p̄sens fuerit appellatus, qualiter probator proponere debet intentionem et appellum suum, et de modo defendendi.

f. 153.

captured before our justices &c. to answer to B. (confessing himself to be a larcener) concerning his confederacy in a larceny whereof he accuses him, and thereupon produce there before the same justices a sufficient sect from the said neighbourhood to make inquest on the subject aforesaid according to the custom of our realm. And produce there this writ. Witness &c. And there may well be added to this writ, as it seems, and if so and so on account of the accusation has by chance withdrawn himself, then cause him to be sought for from county to county, until he be outlawed according to the law of the land. And this ought to be done only at the suit of the lord the king without any other suit, on account of the presumption of the accusation and on account of the flight. But when the party accused shall be present, let the approver state his accusation in these words.

## CHAPTER XXXIV.

A. de N., confessing himself to be a larcener, charges B. with death and confederacy and larceny or robbery, or homicide, for instance, in this manner: that they stole together such a thing at such a place, and so that B. aforesaid had so much for his share; or thus: that they came together to the house of such an one in such a place, or on the road, or elsewhere, and robbed him of such a thing, and after they had robbed him. they slew him, and so that the aforesaid B. had so much for his share, and the same concerning the receiving of it knowingly, and any other felony, and this he offers to prove against him by his own body, according as the court shall think fit. And it will be necessary that the approver should state a certain fact, and all the circumstances, without any variation or alteration, and that he should recognise the person of the accused party, when he shall have been brought in court, because if he shall

1. When the accused shall be present, in what way the approver ought to state his charge and his accusation, and of the mode of defence. f. 153.

cognoverit, præsumeretur contra ipsum, quòd nunquam fuerunt socii. Idem A. appellat B. de N. de societate & latrocinio vel feloniam prædicta, & ita quòd ipse habuit ad partem suam tantum vel de alio latrocinio alibi facto. Et sic poterit plures appellare eodem modo de societate & plurib<sup>9</sup> latrociniis & diversis. Et B. venit & defendit societatem, & latrociniū, roberiā, & mortem, & receptantū, & omnem feloniam, et quicquid ei imponitur de verbo in verbum, & secundū q ei imponitur de verbo in verbum. Et tunc si per corp<sup>9</sup> suum sine aliqua allocatione vel exceptione, quo casu vadietur inter eos duellum, & appellatus det vadium defendendi & pbator det vadium disrationandi. Et si appellat<sup>9</sup> plegios non habuerit, tunc erit gaola plegium utriusq, et dabitur dies ad quem venient armati. Et cū venerint, primò intret defensor & juret in hæc verba.

2.  
Quod ap-  
pellatus  
primo  
juret per  
verba  
negativa,  
et postea  
juret ap-  
pellans per  
verba affir-  
mativa.

Hoc audis, homo, quem per manus teneo, qui te facis appellari A. per nomen baptisterii, quòd ego non sum latro, nec socius tuus de latrocinio, vel roberia, vel hujusmodi, nec tecum furatus fui talem rem, tali loco, nec aliud tale quid fecimus, sicut roberiā talem, nec ego habui ad partem meam tantum, sic me Deus &c. Et postea juret appellans p verba affirmativa & dicet. Hoc audis, homo, quem p manum teneo, qui B. te facis appellari p nomen baptisterii, quòd tu es pjurus, & ideò perjurus quia tu es latro, et socius meus de latrocinio, quia tali loco simul furati fuimus talem rem, vel talem roberiam simul fecimus, vel quid tale, et unde tu habuisti ad partem tuam tantum, sic me Deus &c. Et sic pcutiatur inter eos duellum, or-



not recognise him, it will be presumed against him that they never were associates. The same A. accuses B. de N. of confederacy and larceny, or the felony aforesaid, and so that he himself had for his share so much, or concerning a larceny committed elsewhere. And so he may accuse several persons in the same way of confederacy and several and different larcenies. And B. comes and denies the confederacy and the larceny, robbery and death, and the receiving [of the property], and all the felony, and whatever is imputed to him word for word, and according to whatever has been imputed to him word for word. And then, if by his own body without any allowance or exception, in which case let battle be waged between them, and let the accused person give bail to defend himself, and the approver give bail to deraign. And if the accused person has not sureties, let the gaol be the surety of both, and a day shall be appointed, upon which they shall both come armed. And when they have come, let the defendant first enter and swear in these words.

Hear this, thou man, whom I grasp with my hands, who callest thyself A. by thy name of baptism, that I am not a larcener, nor thy associate in a larceny or a robbery, or any thing of that sort, nor have I together with you stolen such a thing at such a place, nor have we done any thing of the kind, as this robbery, nor have I had for my part so much. So may God &c. And afterwards let the accuser swear in affirmative words, and he shall say: Hear this, thou man, whom I grasp with my hand, who causest thyself to be called B. by thy name of baptism, that thou art perjured, and perjured on this ground, that you are a larcener, and my associate in a larceny, because at such a place we together stole such a thing, or we together made such a robbery or such a thing, and whence thou hadst so much for thy share, so may God &c. And so let the duel proceed between them, the order aforesaid having been observed.

2.  
That the  
accused  
person  
shall first  
swear in  
words of  
denial, and  
afterwards  
the accuser  
shall swear  
in affirma-  
tive words.

dine supradicto observato. Et si appellatus victus fuerit, eodem die vadiet pbator aliud duellum versus alium appellatum, sed statuetur alius dies ad pugnandum, ad quem uterq, veniet armatus, et sic fiat de plurib<sup>9</sup> de quolibet post alium, et (secundùm quosdam) non sufficit quod appellatus cognoscat se fuisse socium suum, vel latronem, vel aliquid consimile ad recreantiam, nisi dicat illud verbum odiosum, quòd recreantus sit, & similiter quòd socius sit, et latro, licèt sufficiat (secundùm quosdam) quòd cognoscat se esse socium, et latronem: quia non refert, utrum quid fiat vel quod tantundem valeat. Si autem pbator victus fuerit, appellatus per plegium dimittatur, ppter suspitionem appelli, nisi justitiiarii ppter aliquam aliam suspitionem providerint illum esse ulterius in prisiona retinendum, quia fortè indictatus est alibi per milites, & alios fide dignos, ut de termino Sancti Hillarii & de termino Paschæ anno regni regis H. quinto, in principio rotuli in comitatu Eborum, de Roberto filio Johannis. Ibi eodem die vadiatum fuit duellum inter appellatum victorem et alium pbatorem de novo appellantem. Si autem plegium invenire non possit, aut regnum abjureret aut remaneat perpetuò in prisiona.

3.  
Si autem  
defensio-  
nem non  
susceperit  
in propria  
persona,  
sed excipiat  
et iudicium  
petat, si  
contra  
talem cog-  
noscentem

Cùm autem in propria persona per corporis defensionem non intraverunt, poterit excipere contra probatorem, & petere sibi allocari, si debeat tali respondere qui est latro cognoscens, vel talis q vocē habere non debeat versus fidelem hominem. Et cùm ipse sit fidelis homo, & in assisa domini regis &c. & in franco plegio, & dominū habeat qui ipsum advocat, et tunc sic. Et B. venit & defendit societate, latrociniū, & totum (ut suprā) sicut versus eum, qui est latro &

And if the accused be vanquished, let the approver on the same day wage another duel against another accused person, but a day shall be appointed when they shall each come armed, and so let it be done with several, one after the other, and (according to some) it is not sufficient that the accused should acknowledge himself to be his associate or a larcener or anything equivalent to recreancy, unless he says the odious word, that he is a recreant, and in like manner that he is his associate and a larcener, although it be sufficient (according to some) that he should acknowledge himself to be his associate and a larcener, because it does not matter whether a certain thing be done, or its equivalent. But if the approver be vanquished, let the accused person be released with his surety as regards the suspicion [arising out] of the accusation, unless the justices on account of some other cause of suspicion order that he shall be kept further in prison, because perhaps he has been indicted elsewhere by knights and others worthy of credit, as in St. Hilary term and in Easter term in the fifth year of the reign of king Henry, at the beginning of the roll in the county of York, concerning Robert the son of John. There on the same day battle was waged between the accused, who had been victorious, and another approver accusing him afresh. But if he cannot find a surety, let him either abjure the realm or remain perpetually in prison.

But when they have not entered in their own person by bodily defence, he may except against the approver, and petition that it be allowed him, if he ought to answer to a man who has confessed himself to be a larcener or such an one as ought not to have a voice against a man of fealty. And since he himself is a man of fealty and in the assise of the lord the king and in frank pledge, and has a lord who avows him, and so on. And B. comes and denies the confederacy, larceny and the whole (as above) as against him, who is a confessed larcener, and

3.  
But if he shall not undertake his defence in his own person, but shall except and seek judgment, if against such a person acknowledged.

se esse  
latronem.  
f. 153 b.

cognoscens, et ipse homo fidelis, et in franco plegio, et in assisa dñi regis, & dñm habet qui ipsum advocat. Et quo casu, si hoc p patriā convictū fuerit, damnabitur pbator appellans & liberabitur appellat⁹. Si autē sic dicat appellat⁹ simpliciter, q defendit totū sicut versus latronē cognoscentē, et de fidelitate se ponat super patriā, si p patriā fuerit malè credit⁹, cū pares sint in culpa appellans & appellat⁹, statim vadietur inter eos duellum. Et eodem modo cū fuerit requisit⁹ appellat⁹, si fuerit in frāco plegio, et in assisa dñi regis, vel si fuerit dñs qui ipsum advocet, nec sit aliquid boni q p se habeat, statim vadietur duellū, cū oīa bona ei defecerint. Item si appellatus aliās rectat⁹ fuerit de maleficio, vel indictatus p milites, et villatas, et legales homines, qui p̄sentes fuerint et hoc testentur. Item si aliās ab alio pbatore appellat⁹ fuerit ppter tales suspitiones, vadietur duellū. Et eodē modo, si cū pbator primū appellatū devicerit, fiat de aliis appellatis ōnib⁹, sicut de primo.

4.  
Si probator  
fecerit  
quod pro-  
misit, te-  
neatur ei  
conventio,  
et sic in  
fine abjuret  
regnum.

Cū autem pbator fecerit q p̄misit, teneatur ei cōventio, quod vitam habeat & membra, sed in regno remanere non poterit, etiam si velit plegios invenire. Si autē pbator vict⁹ fuerit antequā duella sua pfecerit, vel mortu⁹ casu vel morte naturali, alii qui appellati sunt ab eo & non cōvicti, ppter suspitionē appelli p̄batoris remaneant sub plegio, ad standum recto si quis versus eos loqui voluerit, et si plegios invenire non possint, abjurent regnū. Si autem appellati fortē p appellum se retraxerint, et mortuo pbatore redire vo-

he himself is a man of fealty and in frank pledge and in the assise of the lord the king, and has a lord who avows him. And in which case, if this has been established by the country, the approver who accuses will be condemned, and the accused will be released. But if the person accused simply says, that he denies the whole as against a confessed larcener, and respecting his fealty places himself upon the country, if he be ill credited by the country, when they are alike in fault the accuser and the accused, let battle be at once waged between them. And in the same way when the accused should be required, if he is in frank pledge and in the assise of the lord the king, or if there is a lord who will avow him, and there be nothing good which he can show for himself, let battle be forthwith waged, since he wants every element of good. Likewise if the accused person has been arraigned for a misdemeanor, or has been indicted by knights and townships and loyal men, who were present and can bear witness. Likewise if he has been accused at any other time by any other approver, on account of such suspicions let battle be waged. And in the same manner, if the approver has vanquished the first accused, let it be done with all the other accused persons, as with the first.

But when the approver has done what he promised, let the agreement be kept with him, that he have his life and limbs, but he may not remain in the realm, even if he be willing to find sureties. But if the approver be vanquished before he has completed his duels, or has died by a casualty or by a natural death, let the others, who have been accused by him and are not convicted, remain under sureties, on account of the suspicion from the accusation of the approver, to stand their trial, if any is willing to come forward against them, and if they cannot find sureties, let them abjure the realm. But if the parties accused have withdrawn themselves on account of the accusation, and on the death of the approver are willing

ing himself  
to be a  
larcener.  
f. 153 b.

4.  
If the ap-  
prover has  
done what  
he prom-  
ised, let  
the agree-  
ment be  
kept with  
him, and  
so in the  
end let  
him abjure  
the realm.

luerint, cūm ppter appellum & ppter fugam magis suspecti habeantur, si redierint, capiantur, nec sint p plegium dimittēdi, nisi ex speciali praecepto domini regis, et tunc fiat de eis, secundū q̄ superius fit de aliis. Si fortē contingat quōd aliquis in curia sua, vel cōm, vel justitiarius, nisi ad hoc fuerit specialiter datus, appellū tenuerit de pbatore, cōm, & curia erit in misericordia, & justitiarius redarguendus. Et si in curia baronis hoc factum fuerit, summoneatur recordū p hoc breve.

5.  
Si comi-  
tatus vel  
curia ali-  
cujus pe-  
tentis  
appellum  
tenuerit  
de proba-  
tore, veniat  
recordum  
ad curiam  
regis per  
hoc breve.

f. 154.

Rex vic. salutem. Ostensum est nobis, quōd cūm quidā talis captus sit in comitatu tuo cum latrocinio, vel infra libertatem talem, & cognovit latrocinium & pbatore devenerit, et plures appellaverit de societate & latrocinio, comitatus, vel ballivi de tali hundredo, vel de tali curia, vel tales milites & liberē tenentes de eodem hundredo, vel eadem curia, tenuerunt querelam illam, & appellum de eodem pbatore audiverunt, & ita quōd p appellum illud, tot homines damnati fuerant in praefato hundredo vel curia, sine praecepto nostro, & sine warranto, quod inde haberent. Et ideō tibi praecipimus, quōd assumptis tecum pbis hominibus, & custodibus placitorum coronae nrae, sine dilatione convenire facias praedictum hundredum, & praedictam curiam, & illos coram quibus appellum illud deductum fuit & coram vobis fieri faciatis recordum illud, qualiter appellum illud deductum fuit in praedicto hundredo vel curia, & qualiter idem probator praedictos homines appellaverit, & per quae verba, & qua occasione praedicti homines damnati fuerunt, et recordum illud habeas coram nobis ad talem terminum, sub sigillo tuo, et sub sigillis praedictorum custodum, et per quatuor legales homines ex illis, qui recordo illi interfuerunt.

to return, when on account of the accusation and on account of their flight they are regarded as more open to suspicion, if they should return, let them be captured, nor let them be released upon sureties, unless upon a special order from the lord the king, and then let it be done with them according to what has been above said respecting others. If by chance it should happen that any one in his court or in the county, or a justiciary, except where he has been specially appointed for that purpose, has entertained an accusation by an approver, the county and the court shall be amerced, and the justiciary reprimanded. And if this be done in the court of a baron, let the record be summoned by this writ.

The king to the viscount greeting. It has been shown to us, that when such an one was captured in your county with a larceny, or within such a franchise, and confessed the larceny, and became an approver, and accused several persons of confederacy and larceny, the county court or the bailiffs of such a hundred or of such a court, or certain knights and freeholders of the said hundred or the said court, have entertained that complaint, and have heard the accusation of the said approver, and so that through that accusation so many men have been condemned in the aforesaid hundred or court, without our order, and without a warrant that they should hear it. Therefore we enjoin you that, having taken with you honest men and the keepers of the pleas of the crown, without delay you cause to meet together the said hundred and the said court, and those before whom the said accusation was brought forward, and cause a record to be made in your presence, in what manner that accusation was brought before you in the aforesaid hundred or court, and in what manner the said approver accused the said men, and in what words, and on what occasion the said men were condemned, and produce that record before us in such a term under your seal and under the seals of the aforesaid keepers and by four loyal men of those who were present at

5.  
If a county  
or a court  
has enter-  
tained the  
accusation  
of any  
plaintiff  
upon an  
approver's  
evidence,  
let the  
record  
come to  
the king's  
court under  
this writ.

f. 154.

Et statim probatorem illum recipias à ballivis illis, & salvò custodias, & illum habeas coram nobis vel justitiariis nostris &c. & omnes illos quos de societate appellaverit & latrocinio, ad respondendum ei in prædicto appello, unde eos appellat.

6. Sunt nonnulli, qui per appellum probatoris se subtrahunt, & quandoque propter adventum justitiariorum, pro indictamento & malo recto, & eo quòd malè crediti sunt in itinere per milites & villatas. Et unde coram rege cum propter duplicem suspicionem, scilicet propter appellum & sacramentum militum, & fugam, non sunt per plegium dimittendi si redierint, sed in prisona retinendi, donec rex inde præceperit voluntatem suam, quia plures unde sunt quidem qui finem faciunt cum rege, antequam redeant, vel cum fuerint in prisona. Et ideò fiat vicecomi breve de talibus in hac forma.

Item breve vicecomiti quod probatorem habeat et omnes quos ipse appellaverit de societate, propter appellum probatoris se subtrahunt.

7. Rex vic. salutem. Scias quòd talis finem fecit nobiscum pro tali, vel sic: Scias quòd finis factus est nobiscum pro tali, qui est in prisona nostra, vel aliter: Scias quòd finis factus est nobiscum coram justitiariis nostris, qui ultimò itineraverunt in comitatu tuo, sicut ipsi justitiiarii nostri recordantur, pro A. qui rectatus fuit coram eis de burglary & malè creditus à xii. militibus & villatis, vel qui fugit propter appellum probatoris: quòd redire possit & esse sub plegio, ad standum recto, si quis versus eum loqui voluerit. Et ideò tibi præcipimus, quòd si prædictus A. redierit, & tibi plegium invenerit ad standum recto in adventu justitiariorum de eodem recto, si quis versus eum loqui voluerit, tunc ei inde pacem habere permittas. Item

Si autem appellati venerint et finem fecerint, quod redire possunt et esse sub plegiis.



that record. And forthwith receive that approver from those bailiffs, and have him in safe custody, and produce him before us or our justiciaries &c., and all those whom he has accused of confederacy and larceny, to answer him on the aforesaid charge, with which he charges them.

There are some, who on account of the accusation of the approver withdraw themselves, and sometimes on account of the coming of the justiciaries, because of an indictment and a trial for misdemeanor, and because they have bad credit on the circuit with the knights and townships. And hence when on account of a double cause of suspicion, for instance on account of the accusation and the oath of the knights they have taken flight, they are not to be dismissed upon bail, if they should return, but they are to be retained in prison, until the king has announced his will, hence there are some who make a fine with the king, before they return, or when they have been put into prison and accordingly let a writ go to the viscount in this form.

6. Likewise a writ to the viscount that he produce before the king the approver and all whom he has accused of being accomplices, because several perchance withdraw themselves on account of the accusation of the approver.

The king to the viscount greeting. Know that such an one has made a fine with us for such a matter; or thus, Know that a fine has been made with us for such an one, who is in our prison; or otherwise, Know that a fine has been made with us before our justices, who made the last circuit in your county, as our justices themselves have recorded for A., who was arraigned before them of burglary, and was in bad credit with the twelve knights and the townships, or who fled on account of the accusation of an approver; that he may return and be under surety, to stand his trial, if any one will speak against him. And therefore we enjoin you, that if the aforesaid A. shall return and find you a surety to stand his trial, at the coming of our justices concerning the said trial, if any one wishes to speak against him, you should permit him to have peace thereupon.

7. But, if the accused have come and made a fine, that they may return and be under surety.

si aliquis rectatus de roberia, vel alio maleficio deliberat<sup>9</sup> fuerit per patriam, fiat breve vicecoñ de deliberandis catallis suis in hac forma.

8. Ubi quis appellatus per patriam fuerit deliberatus, quod habeat catalla sua. Rex vicecoñ salutem. Scias quòd A. quem B. in curia nostra &c. appellavit de pace, & plagis, & mahemio, per testimonium visneti sui deliberatus est, & quietus clamatus, sicut ille qui non fuit inde culpabilis: & idè tibi præcipimus, quòd omnia catalla ipsius A. quæ tu cepisti, vel talis ballivus tuus occasione prædicti appelli, & captionis prædicti A. eidem A. sine dilatione reddi facias, & ei firmam pacem nostram habere permittas. Est & aliud breve de materia ista, quod est generale de dimittendo ipsos per plegium, nisi in casibus exceptis.

9. Breve de replegiando aliquem, quem talis cepit et captum detinet. Rex vicecoñ salutem. Præcipimus tibi quòd justè & sine dilatione replegiari facias talem, quem talis cepit & captum detinet, nisi captus sit per speciale præceptum nostrum, vel capitalis justitiarii nostri, vel pro morte hominis, vel foresta nostra, vel pro aliquo alio recto quare secundum legem Angliæ non sit replegiandus, ne ampliùs &c. pro defectu justitiæ &c. Teste &c.

f. 154 b.

#### CAP. XXXV.

1. Quod nemo potest curiam suam habere de probatore vel latrone cognoscente. Dictum est suprà quòd nemo potest habere curiam suam de pbatore & latrone cognoscente, videamus igitur quæ placita pertineant ad curiam, et quæ ad comitatum. Sunt enim quidam barones & alii, qui libertatem habent, scilicet sok, sak, tol & team, infangenthef, utfangenthef. Isti possunt judicare in curia sua, si quis inventus fuerit infra libertatem suam seysitus de

Likewise if any one arraigned for robbery or any other misdemeanor has been acquitted by the country, let a writ issue to the viscount to release his chattels in this form.

The king to the viscount greeting. Know that A.,  
whom B. in our court &c. has accused of a breach of the  
peace, of blows, of mayhem, has been acquitted by the  
testimony of the neighbourhood, and is quit-claimed, as  
one who has not been culpable thereof: and thereupon  
we enjoin you, that you cause to be restored to the said  
A. without delay all the chattels of A. himself, which  
you have seized, or so and so your bailiff, on occasion of  
the charge aforesaid and the seizure of the aforesaid A.,  
and that you allow him to enjoy our peace undisturbed.  
There is another writ on the same matter, which is  
general, concerning the release of the parties accused  
upon bail, unless in excepted cases.

8.  
Where a  
person  
accused  
has been  
acquitted  
by the  
country,  
that he  
should  
have his  
chattels.

The king to the viscount greeting. We enjoin you,  
that justly and without delay you cause to be released  
on bail such an one, whom so and so has seized and  
keeps a prisoner, unless he has been seized through a  
special order of ourselves, or of our chief justiciary, or  
for homicide, or for our forest, or for some other ar-  
raignment, for which he is notailable according to the  
law of England, lest further &c. for defect of justice &c.  
Witness &c.

9.  
A writ for  
releasing  
on surety  
any one,  
whom so  
and so has  
seized and  
detains a  
prisoner.

#### CHAPTER XXXV.

It has been said above, that no one can hold his court  
at the instance of an approver and confessed larcener, let  
us see then what pleas pertain to a court, and what to a  
county. For there are certain barons and others who  
have a franchise, for instance, *sok and sak, tol and team,*  
*infangenthef, utfangenthef.* They may judge in their  
court, if any one has been found within their franchise

f. 154 b.  
1.  
That no  
one can  
hold his  
court at  
the in-  
stance of  
an ap-  
prover or

Item quæ placita pertineant ad curiam, et quæ ad comitatum, et de libertatibus singulorum.

Britton, i. ch. xvi.

§ 1.

Fleta, 54.

Britton, ii.

ch. iii. § 3.

Britton, *ib.*

§ 13.

aliquo latrocinio manifesto, sicut hondhabend & bacberend,<sup>1</sup> & insecutus fuerit per saccabor,<sup>2</sup> quia, nisi fuerit in seysina, licet aliquis sequatur versus eum sicut versus latronem, non pertinēbit ad curiam, hundreda,<sup>3</sup> vel wapentakia,<sup>4</sup> cognoscere de hujusmodi furtis, nec inde facere inquisitionem per patriam, utrum talis qui non fuerit seysitus culpabilis sit vel non. Nec quod vadietur inter aliquos duellum ante seysinam. De hoc quod dicit infangethef<sup>5</sup> videndum est, quid sit. Et dicitur infangethef<sup>6</sup> latro captus in terra alicujus, de hominibus suis propriis, seysitus latrocinio. Utfangethef<sup>7</sup> verò dicitur latro extraneus, veniens aliunde de terra aliena, & qui captus fuit in terra ipsius qui tales habet libertates. Sed non sequitur, quòd ille posset hominem suum proprium, captum extra libertatem suam, reducere usque infra libertatem suam & ibi eum judicare ex tali libertate. Debet enim quis juri subjacere ubi delinquit. Proprios enim latrones & alienos, infra libertatem suam captos, judicare possunt. Item cognoscere possunt de medletis & hominibus verberatis, vulneratis, nisi felonia & pax regis vel<sup>8</sup> vicecomitis non apponitur. Poterit tamen apponi pax domini regis & ballivorum. Item de equis, bobus, & aliis animalibus vulneratis, & mahematis. Talis quidem transgressio emendari poterit per vicinos. Item cognoscere possunt de debitis quæ exiguntur sine brevi domini regis & etiam de aliis quæ relaxantur sine brevi. Ad vicecomites verò pertinent hujusmodi placita in comitatu. Cognoscere quidem potest de medletis, plagis, verberibus, & consimilibus pro defectu dominorum, nisi querens adjiciat de pace domini regis

<sup>1</sup> "hondehebbende et backeber-  
ende," MS. Rawl. C. 160.

<sup>2</sup> "sakabor," *ib.*

<sup>3</sup> "hundredam," *ib.*

<sup>4</sup> "wapentakiam," *ib.*

<sup>5</sup> "infangenthef," MS. Rawl. C. 160.

<sup>6</sup> "infangenthef," *ib.*

<sup>7</sup> "utfangenthef," *ib.*

<sup>8</sup> "et vicecomitis," *ib.*

seysed of any manifest larceny, as *hondhabend* and *bacherend*, and he has been followed by the *saccabor*, because, unless he was in seysine, although some one was pursuing him as a larcener, it shall not pertain to the court, nor the hundred, nor the wapentake, to take cognisance of such thefts, nor to make an inquest upon them by the country, whether such an one, who was not seysed, was culpable or not. Nor that battle shall be waged between any persons before seysine. Concerning this which is called *infangethef*, let us see what it is. And a larcener caught upon any person's land by his own men seysed of the larceny is called *infangethef*. But a larcener from without, coming from elsewhere from another's land, and who has been caught on the land of such an one who has such franchises, is called *utfangethef*. But it does not follow, that he can bring back within his own franchise his own man caught beyond his franchise, and there judge him in right of such franchise. They may judge their own men and the men of others for larceny, if caught within their franchise. Likewise they may take cognisance of medleys, and men beaten or wounded, if felony or the peace of the king or of the viscount be not appended. But the peace of the lord the king and the bailiffs may be appended. Likewise concerning horses, oxen, or other animals wounded or maimed. Such a trespass may be corrected by neighbours. Likewise they may take cognisance of debts, which are exacted without a writ from the crown, and likewise of other things which are relaxed without a writ. But to the viscounts pleas of this kind appertain in the county court. He may take cognisance of medleys, cuts, blows, and such like, in default of the lords, unless the complainant add concerning a breach of the peace of the king, or appends felony, for thereupon even

confessed  
larcener.  
Likewise  
what pleas  
belong to  
a court,  
and what  
to the  
county,  
and con-  
cerning the  
franchises  
of indi-  
viduals.

infracta, vel feloniam apponat, extunc enim se vice comes non debet intromittere, cū hoc tangat personam ipsius domini regis & coronam suam. Et ideo coronatores querelam illam sive appellum irrotulare debent, annum & diem & locum, & omnia verba appellari per ordinem, & omnes circumstantias ut supra de appellis usque ad adventum justitiariorum. Sed si tantum agatur de pace vicecomitis, non erit ibi amissio vite vel membrorum, sed sequitur poena pecuniaria de convictis. Potest quidem vicecom̃ tenere plura placita, quæ non sunt ex officio vicecom̃, sed vice ipsius regis et ex causa necessaria,<sup>1</sup> non sicut vicecom̃ sed sicut justitiarius regis, si hoc ei specialiter demandetur quod juratam capiat, & inquisitiones faciat, extensiones & partitiones, licet in quibusdam iudicium reddere non possit. Item habet ex speciali mandato regis, non ex officio vicecom̃, ubi mandatum habet quod justitiet aliquem, & quo casu, videtur quod omnia habere debeat ut justitiarius, sine quibus placitum illud terminari non possit. Habet etiam ut justitiarius & non ex officio vicecom̃, quod cognoscere potest de averiis captis, & detentis, contra vadium & plegium, quod quidem placitum pertinet ad coronam, & quod ei ex necessitate conceditur ad terminandum ratione inferioris dicenda. Item pertinet ad ipsum cognoscere de assisis in regno statutis, & juratis per regnum, si fuerint servatæ vel non, sicut panis & cervisie, & falsis mensuris quæ pertinent ad coronam, & de quibus attachiamenta facere potest, simul cum coronatore, usque ad adventum justitiariorum. Item pertinet ad vicecom̃ visus franciplegii in turnis suis duobus, singulis annis, per hundreda, wapentakia faciendis, & ideo qualiter debent fieri turni videndum est.

f. 155.

Britton, i.  
ch. xxix.  
§ 38.

<sup>1</sup> "Potest quidem vicecomes facere | "tis, sed vice ipsius regis ex causa  
"placita, non ex officio vicecomi- | "necessaria." MS. Rawl. C. 160.

the viscount ought not to intermeddle with it, since this touches the person of the king and his crown. And accordingly the coroners ought to enrol that complaint or accusation, the year and the day and the place, and all the words of the accusation in order, and all the circumstances as above stated concerning accusations, to await the coming of the justices. But if only the peace of the viscount be at stake, there shall not be the loss of life or limbs, but a pecuniary penalty follows upon conviction. The viscount may hold several pleas, which do not belong to his office, but in the king's place and from a necessary cause, not as viscount but as the king's justiciary, if this be specially deputed to him, that he hold a jury and make inquests, valuations, and partitions, although in some cases he cannot render a judgment. Likewise he has from a special mandate of the king, not from his office of viscount, when he has a mandate that he should judge any one, and in which case it seems that he ought to have as a justiciary all things, without which that plea cannot be determined. He has likewise as a justiciary, and not from his office of viscount, that he can hold cognisance of cattle taken and detained, against bail and sureties, which plea pertains to the crown, but which is conceded to him from necessity to determine in a manner to be explained below. Likewise it pertains to him to hold cognisance of the assises appointed in the realm, and of the *jurata* throughout the realm, if they have been observed or not, as of bread and beer, and false measures, which pertain to the crown, and concerning which he can make attachments, together with the coroner, to await the coming of the justices. The view of frankpledge pertains to the viscount in making his two turns, every year, through the hundreds or wapentakes, and therefore we must see how the turns ought to be made.

f. 155.

## CAP. XXXVI.

1.  
De mino-  
ribus et  
levioribus  
criminibus  
quæ civili-  
ter inten-  
tantur.

Dictum est suprâ de majoribus criminibus, & appellis quæ criminaliter intentantur, & aliquando ultimum inducunt supplicium, aliquando membrorum truncationem, aliquando exilium perpetuum, vel ad tempus. Nunc autem dicendum est de minoribus & levioribus criminibus, quæ civiliter intentantur, sicut de actionibus injuriarum personalibus, & pertinent ad coronam, eò quòd aliquando sunt contra pacem domini regis. Videndum igitur quid sit injuria, & sciendum quòd injuria est, quicquid non jure sit, & unde suprâ in parte dicitur, quòd si quis interfectus fuerit, videndum erit an injuria interfectus sit, vel sit talis qui nullo jure occiditur. Igitur qui latronem occiderit, non tenetur, nocturnum vel diurnum, si aliter periculum evadere non possit, tenetur tamen si possit. Item non tenetur, si per infortunium, & non animo & voluntate occidendi, nec dolus nec culpa ejus inveniatur, de quo supradictum est, & de gratia principis cum eo mitiùs agitur hoc probato. Non jure occiditur quis, ut si in assultu præmeditato, & in felonia, et animo occidendi fuerit quis interfectus, ob iram et cupiditatem. Item si quis unum percusserit et occiderit, cum alium percutere vellet in felonia, tenetur. Item si cum leviùs credidit percussisse, graviùs percusserit et occiderit, tenetur, debet enim quilibet modum et mensuram adhibere in suo facto. Et est injuria talis, quæ inducit ultimum supplicium, cum criminaliter agatur. Est & alia, quæ non nisi poenam pecuniariam tantum, & quandoque eandem poenam cum carceris inclusione, secundum facti qualitatem. Fit autem injuria non solum cum quis pugno percussus fuerit, verberatus,



## CHAPTER XXXVI.

We have spoken above of greater charges and accusations, which are brought criminally and sometimes lead to the last punishment, sometimes to mutilation of limbs, sometimes to exile for life or for a time. Now, however, we may speak of minor and lighter charges, which are brought civilly, as concerning actions for personal injuries, and they appertain to the crown, for sometimes they are against the peace of the crown. It is to be seen therefore what is an injury, and it is to be known that an injury is whatever is done not rightfully, and it has been said above in part, that if any one be slain, we must see whether he has been slain injuriously or is such an one as is slain with no right. Therefore he who kills a larcener by night or by day is not liable, if he otherwise could not escape danger, but he is liable, if he could. Likewise he is not liable, if he kills him through ill fortune, and not with the intention or the desire of killing him, and neither deceit nor fault, of which we have spoken above, is found in him, and through the favour of the sovereign he is treated more mildly, when this is proved. A person is slain with no right, as if he be slain in a premeditated assault, or in a felony, and with the intention of killing, from anger and cupidity. Likewise if a person has struck and killed one person, when he wished to strike another in a felony, he is liable. Likewise if, when he believed himself to have struck more lightly, he has struck more severely and killed him, he is liable, for every one ought to maintain moderation and measure in his act. And it is such an injury as may bring on the last punishment, when criminal proceedings are taken. There is also another injury, which only brings on a pecuniary penalty, and sometimes the same penalty accompanied with inclusion in a prison, according to the quality of the act. But an injury is done not only when has been struck with a fist,

1.  
Of minor  
and lighter  
charges  
which are  
brought  
civilly.

vulneratus, vel fustibus cæsus, verùm cùm ei convitium dictum fuerit, vel de eo factum carmen famosum et hujusmodi.

2.  
Qualiter  
quis pati-  
tur injuri-  
am propter  
suos.

Patitur autem injuriam quis, non solùm per seipsum, sed etiam per alios quos habet in potestate, sicut per liberos suos & uxorem suam. Vir autem agere poterit de injuria facta uxori suæ, sed non è contrario. Defendi enim uxorem à viro, non virum ab uxore dignum est. Item injuriam patitur quis per illos, quos in familia sua habuerit, sicut servientes suos et servos, si pulsati fuerint, et verberati in contumeliam suam, vel quatenus sua interfuit operibus eorum non caruisse.

3.  
f. 155 b.  
In quibus  
casibus  
servi  
habent  
personam  
standi in  
judicio  
contra  
dominos  
suos.

De plagis verò & verberibus sibi factis, habent ipsi actionem & non dñs, habent enim servi psonam standi in judicio contra omnes de injuriis sibi factis, contra pacem domini regis, & multò fortiùs servientes. Habent etiam servi psonam standi in judicio contra dominos suos, de seditione<sup>1</sup> domini regis, & aliis quæ fiunt contra psonam ejus, quia ibi admittitur quilibet de populo, & contra dominum suum de atroci injuria, ubi agitur de vita vel membris vel roberia. Pœna autem injuriarum quandoq, erit corporalis, quandoq, pecuniaria, & si fuerit pecuniaria, & certa, & in judicium deducta, tunc erit à judice taxanda, cùm sit omne interesse incertum, & quandoq, minuitur, cùm sit in judicium deducta, secundùm qualitatem delicti & psonæ cui injuriatur, nunquam tamen crescere debet de jure.

4.  
Quod atrox  
injuria  
æstimatur

Est quidem injuria levis, & est atrox, atrocitas verò æstimatur ex ipso facto, ut si quis fuerit malè vulneratus, verberatus, et malè tractatus contra pacem.

<sup>1</sup> "seditione." Sic, MS. Rawl. C. 160; "seductione," MS. Rawl. C. 159 and MS. Galeazzo.

or flogged, or wounded, or cudgelled, but when words of insult are applied to him, or libellous verses made concerning him.

A person also suffers an injury, not only in his person, but also in respect of those who are under his authority, as in respect of his children or his wife. A husband also may bring an action for an injury done to his wife, but not the converse. For it is worthy that a wife should be defended by her husband, but not a husband by his wife. Likewise a person suffers injury through those who are members of his family, such as his servants and his serfs, if they have been beat or flogged in order to insult him, or inasmuch as it was his interest not to be without their services.

Serfs also themselves, and not their lords, have an action for blows and stripes inflicted on themselves, for serfs have a personal right of action in court against all persons for injuries done to themselves, against the peace of the king, and much more so servants. For serfs have a personal right to be heard in a court of law against their lords concerning sedition against the lord the king, and other matters which are done against his person, because there any one of the people is admitted, and against their lord concerning any atrocious injury, where life or limbs or robbery is at stake. But the punishment of injuries will be sometimes corporeal, sometimes pecuniary, and if it be pecuniary and certain and brought into judgment, it will have to be taxed by the judge, since all interest is uncertain, and sometimes it is reduced, when it is brought into judgment, according to the quality of the offence and of the person to whom the injury is done. It ought not, however, to increase of right.

There is indeed a light injury, and there is an atrocious injury, but the atrocity is estimated from the act itself, as if a person has been badly wounded, beaten, or ill-

2.  
How a person suffers an injury in respect of his relatives.

3.  
f. 155 b.  
In what cases serfs have a personality in court to appear against their lords.

4.  
That an atrocious injury is

multis  
modis.

Item ex loco, si in curia domini regis, vel dominorum, si coram justitiariis, vel in comitatu corā vicecomite. Item si in theatro, in nundinis, vel in foro, vel alibi corā omni populo. Item locus vulneris, ut si in fronte, vel in oculo magis quā in loco secreto. Item ex psona æstimatur injuria, ut si magistratib<sup>9</sup>, vel ballivis fiat, parentibus, vel patronis. Item non solū tenetur actione injuriarum, qui fecit injuriam (hoc est) qui pcussit, sed ille qui dolo fecit, vel qui dolo pcu-  
ravit, ut alicui maxilla pugno percuteretur. Hæc autem actio p dissimulationem aboletur. Et ideò si quis injuriam passus, hoc statim ad animum non revocaverit, postea ex pœnitentia remissam injuriam per dissimulationem ad animum recolligere non poterit.

## CAP. XXXVII.

1.  
De vetito  
Namii.  
Britton, i.  
ch. xxviii.  
§ 2.

Detentio namii pro districtione facienda pertinet ad coronam domini regis, & vix conceditur alicui terminandum, præterquā ipsi domino regi, vel justitiariis suis. Sed quia placitum istud dilationem non capit, propter animalia muta, & propter damnum quod evenire posset, si diu detinerentur inclusa, donec placitum de vetito namii<sup>1</sup> terminaretur, ideò placitum de vetito namii vic. conceditur terminandum, hac necessitate, quod quidem non habet ex officio vicec. sed sicut justitiarius domini regis. Et eodem modo non erit aliquis, qui hujusmodi libertatem clamare possit, ut de jure sibi ipsi competentem, sed ut justitiarius domini regis, & de speciali concessione regis, et nisi hoc habeat, tueri non poterit aliquo tempore longo. Item

<sup>1</sup> "vetito namii."—*Naam* signifies a seizure in Anglo-Saxon, hence the thing seized. The *vetitum*, or *vé* as it was termed in Law-French,

was the refusal to release upon offer of surety the distress or thing seized.

treated contrary to the peace. Likewise according to the place, if in the court of the lord the king or of lords, if before the justices, or in the county before the viscount. Likewise if in the theatre, in the fair, or in the market, or elsewhere before the public. Likewise the place of the wound, as if it be on the forehead, or in the eye, rather than in a hidden part. Likewise the injury is estimated according to the persons, as if it be done to magistrates, or to bailiffs, to parents, or to patrons. Likewise not merely he, who has done the injury, that is, who has struck the blow, is liable to an action for injury, but he who did it by deceit, or who procured it to be done by deceit, that a person's cheek should be struck with a fist. But this action is abolished by dissimulation. And therefore if a person who has suffered an injury, has not recalled it to memory at once, he shall not be able to recall to mind on repentance an injury once remitted by dissimulation.

## CHAPTER XXXVII.

The detention of a thing taken in making a distraint appertains to the crown of the lord the king, and is scarcely allowed to any one to determine, except to the lord the king and his justices. But because that plea does not admit of delay, on account of dumb animals, and on account of the loss which may happen if they are detained too long shut up, until a plea of refusal of the distress has been determined, therefore the plea of refusal of the distress is allowed to the viscount to determine from this necessity, as he does not hold the plea from his office of viscount, but as justiciary of the king. And in the same way there will not be any one who can claim a franchise of this kind, as belonging to himself of right, but as the justiciary of the king and of special grant from the king, and unless he has this, he cannot maintain it for any long time. Likewise when a person

<sup>1.</sup>  
Of the  
refusal of  
a distress.

f. 156.

cùm quis talem habeat libertatem, refert utrū averia deliberata fuerint p breve dñi regis ad querelam factam regi, vel sine brevi regis ad querelam factam immediatè vicecomiti ad hoc, quòd quis habeat curiam suam de hujusmodi placito, si curiam petat, cùm in justitia facienda negligens non extiterit. Omnia verò, quæ contingere possunt circa hujusmodi placitum, consistunt & versantur circa duo, vz. circa captionem & detentionem cōtra vadium & plegium, & est omnis captio justa vel injusta. Si autem justa sit captio, vz. p servitio detento ab aliquo qui servitium illud cognoscit, tunc poterit ille, qui capit, cognoscere captionem illam, nec in tali captione delinquit. Sed si averia taliter justè capta contra vadium & plegium fuerint detenta, cùm petita fuerint p vadium et plegium, præstita securitate de servitio faciendo cum arreragiis, vel si alia occasione capta fuerint sicut p damno facto, vel injuriis vel debitis, vel aliis, quæ terminari possunt sine brevi dñi regis, justa poterit esse captio, et injusta detentio, primò agatur de captione, quia nunquam fortè capta, vel si capta fortè justè vel injustè, nunquā fuerunt petita p vadium & plegios, vel si petita, non venit ad curiam dñi sui ad standum recto, & ita quòd iterum capta. Item si p damno capto, disputari poterit utrū capta fuerint in damno vel extra. Tunc de veniendo ad curiam & parendo juri, & hoc convictum sit in comitatu, tunc ille qui cepit erit in misericordia vicec. et averia sic capta deliberabit vic. tali modo, quòd ille, cujus averia sunt, veniat ad curiam dñi sui ad rationabilem summonitionem, et ad certum diem responsur<sup>o</sup> de servitio suo q cognoscit, & de arreragiis servitii illius. Et in hoc casu, oportet quòd

has such a franchise, it is of importance whether the beasts have been released by a writ from the lord the king upon a complaint made to the king, or without a writ from the king upon a complaint made immediately to the viscount for this purpose, that a person should have his court upon this plea, if he seeks a court, when he is not negligent in applying for justice. But all things, which can happen about a plea of this kind, consist of and are contained in two matters, namely, the seizure and the detention against bail and surety, and every seizure is either just or unjust. But if the seizure is just, that is for a service kept back by some one who acknowledges the service, then may he who seizes acknowledge the seizure, nor does he commit a delict in the seizing. But if the beasts so seized justly have been detained contrary to bail and surety, when they have been applied for with bail and surety, security having been offered for doing the service with the arrears, or if they have been seized on another occasion for damage done, or injuries, or debts, or other matters, which may be determined without a writ from the lord the king, the seizure may be just and the detention unjust; let us treat first of the seizure, because they may by chance have never been seized, or if seized by chance justly or unjustly, they have never been applied for with bail and sureties, or if applied for, he has not come into the court of the lord the king to stand his trial, and so that they have been seized a second time. Likewise if for damage received, it may be disputed whether they have been taken in damage or without. Then concerning the coming into court and obeying the law, and if this has been proved in the county, then he who has seized will be amerceable by the viscount, and the viscount shall release the beasts so seized, in such a manner, that he whose beasts they are, shall come to the court of his lord upon a reasonable summons and on a certain day, to answer for the service which he owes him, and for the arrears of that service. And in

dñs defendat detentionem vel concedat, si autem concedat detentionem injustam, planum est q ex hoc sequitur: si autem defenderit detentionem injustam, et querens sectam habeat statim ad manum, quæ examinata in omnib<sup>9</sup> concors fuerit, & quòd omnia facta fuerunt sub eorum præsentia, tunc vadiabit defendens legem se duodecima manu,<sup>1</sup> in qua si defecerit, incidet in manum vicecomitis, sicut in primo casu, & restituet querenti damna sua, quæ habuit p illā detentionem. Si autem legem fecerit dñs, tunc quiet<sup>9</sup> recedet, et querens in misericordia, sed nulla damna recuperabit, et returnabit dño averia capta. Et querens aut satisfaciat dño statim de servitio suo, aut replegiare faciat averia sua usque ad certum diem, ad quem faciet ei id q de jure facere debebit. Sed quid si postea cùm fuerint retornata petantur p vadium & plegium, et tunc sit vetita? videtur quòd deliberari debent ut priùs.

2.  
Si vero  
captio  
fuerit in-  
justa.

Si verò captio fuerit injusta sicuti p servitio, quod tenens non cognoscit, & de quo sine præcepto domini regis respondere noluerit, tunc oportet quòd ille, qui averia ceperit, respondeat de injusta captione, sive illa detinuerit injustè contra vadium & plegium, ut suprà, sive non. Et hoc, si querens doceat per certa judicia, et sectam sufficientem, quòd capta fuerit pro servitio quod non cognoscit, quia cùm quis dedixerit servitium quod petitum est, sive debitum sit & solutum sive non, cùm in placito illo per breve domini regis pervenire possit ad duellum vel magnam assisam, manifestè patet, quòd nullus liber homo de tali servitio tenetur respondere sine brevi domini regis, non magis

f. 156 b.

<sup>1</sup> "cum duodecimā mann," MS. Rowl. C. 159.



this case it is requisite that the lord deny or admit the detention, but if he admits an unjust detention, it is plain what follows thereupon: but if he denies the unjust detention, and the plaintiff has his sect forthwith at hand, which when examined agrees in all things, and that everything was done in their presence, then let the defendant wage his law with twelve jurors, in which if he fails he shall fall into the hand of the viscount, as in the first case, and he shall restore to the complainant his losses, which he has suffered from that detention. But if the lord has established his law, then he shall retire acquitted, and the complainant may be amerced, but he shall recover no damages, and shall return to the lord the beasts seized. And let the complainant forthwith satisfy the lord on account of his service, or cause his beasts to be released on sureties to appear at a certain day, when he shall perform for him that which he ought to do. But what if afterwards, when they have been returned, they are claimed with bail and surety and are then refused? It seems that they ought to be released as before.

But if the seizure has been unjust, as for a service, which the tenant does not acknowledge, and concerning which he is unwilling to answer without an order from the lord the king, then it is requisite, that he who has taken the beasts, should answer for their unjust seizure, whether he has detained them unjustly against bail and surety, as above, or not. And this, if the complainant shows by certain judgments and a sufficient sect, that this has been seized for a service which he does not acknowledge, for when a person has denied a service, which is claimed, whether it be due and has been paid, or not, since in that plea he can arrive at a duel or a great assise through a writ of the lord the king, it is manifestly clear that no freeman is bound to answer concerning such a service without a writ of the lord the

2.  
But if the  
seizure  
has been  
unjust.  
  
f. 156 b.

quàm de libero tenemento suo. Sed quid si dominus recenter fuerit in seysina de servitio de quo cõtenditur, nunquid poterit tenens illud dedicere? Bene poterit (ut videtur) licet solutum, debitum vel indebitum. Tu<sup>1</sup> dic, quòd si dominus fuerit in seysina servitii, p quo distringitur p namium querentis, & hoc possit verificari p patriam, tenens non poterit illud servitium sic dedicere, quin inde capiat inquisitio, s. de seysina recenti p manum tenentis. Si tenens hujusmodi seysinam dedixerit, & inquisitione p domino faciente, querens erit in misericordia, & averia capta returnabit domino, quia in hujusmodi casu perveniri non potest ad duellum nec ad magnam assisam, propter seysinā recentem. Si autem cõvictum sit p inquisitionem, quòd dominus non fuerit in seysina servitii p manum tenentis, p quo recognovit districtionem, tunc dominus erit in misericordia & querens recuperabit damna sua, & averia sua deliberata remanebunt, & dominus sibi pvideat p breve si voluerit, p hujusmodi servitio recuperando, ubi pveniri poterit ad duellum vel magnam assisam. Idem erit dicendum, si tenens moriatur & dominus fuerit in seysina servitii p quo districtionem fecit, anno & die quo tenens su<sup>o</sup> fuit viv<sup>o</sup> & mortu<sup>o</sup>, si hæres tenentis postmodum velit hujusmodi servitium dedicere, cùm dominus p eodem distrinxerit.<sup>1</sup>

3.  
Si querens  
queratur  
de utraque  
s. captione  
et deten-  
tione.

Si autem tenens conqueratur de injusta captione, & injusta detentione simul & semel, benè poterit utramq, injuriam si velit proseguire, & per eosdem testes, & per eandem sectam, & si fuerint concordēs, & idonei, & sufficientes, ponere poterit captoem & detentorem ad legem si voluerit, & vadiata lege, habebit diem ad

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<sup>1</sup> "Tu dic, quod si dominus," | is omitted in MS. Rawl. C. 160, also  
down to "pro eodem distrinxerit," | in MS. Rawl. C. 159.

king, any more than concerning his freehold. But what if the lord has recently been in seysine of the service, concerning which there is a dispute, can the tenant possibly deny it? He may well do so, as it seems, although it has been paid, due or not. Say you, that if the lord has been in seysine of the service, for which distraint is made by the seizure of the beasts of the plaintiff, and this can be verified by the country, the tenant cannot so deny that service as to prevent an inquest being held thereupon, that is concerning the recent seizure by the hand of the tenant. If the tenant has denied a seysine of this kind, and an inquest makes for the lord, the plaintiff shall be in mercy and he shall restore the beasts seized to the lord, because in a case of this kind, one cannot proceed to a duel or a great assise on account of the recent seysine. But if it has been convicted by the inquest, that the lord has not been in seysine of the service by the hand of the tenant, for which he has acknowledged the distress, then the lord shall be in mercy, and the plaintiff shall recover his losses, and his beasts shall remain released, and the lord shall provide by a writ, if he pleases, for the recovery of a service of this kind, where one may proceed to a duel or a great assise. The same is to be said, if the tenant dies and the lord was in seysine of the service, for which he made the distraint, on the year and a day on which the tenant was living and dead, if the heir of the tenant shall afterwards wish to deny a service of this kind, when the lord has distrained for it.

But if the tenant complains of the unjust seizure and the unjust detention at one and the same time, he may well prosecute both injuries, and by the same witnesses, and by the same sect, and if they in concord and are suitable and sufficient persons, he may put the seizor and the detainer to his law, if he wishes, and the law having been waged he shall have a day to prove his

3.  
If the plaintiff complain of both, that is, the seizure and the detention.

faciendam legem, usq, ad proximum cōm, ad quem poterit uterq, se essoniare si voluerit. Et si ad diem legis faciendæ defuerit aliquis de xii., vel si contra prædictos excipi possit, quòd non sunt idonei ad legem faciendam, eò quòd villani sunt, vel aliàs idonei minus, tunc dominus incidet in misericordiam, & damna restituet sicut priùs. Et contingit multotiens, quòd dñs potest salvò defendere detentionem contra vadium & plegium, sed non injustam captionē, & quo casu, uterq, cadet in misericordiam vicec., tam dñs quàm tenens, domin<sup>9</sup> ppter injustam captionem, et tenens p falso clamore de injusta detentione.

Britton, l.  
i. ch.  
xxviii. § 22.

4. Si domin<sup>9</sup> post legem vadiatam defaultam fecerit, Si dominus post legem vadiatam defaultam fecerit. Britton, ib. Fleta, 98. distringend<sup>9</sup> erit quòd veniat ad proximum cōm, auditur<sup>9</sup> iudicium suum de defaulta, ad quem cōm sive venerit sive non, debet tenens habere averia sua deliberata, eò quòd dñs defecit in lege sua facienda, & post talem distractionem, nullum habebit reus essonium in odium defaultæ quàm fecit,<sup>1</sup> nec possit dedicere cōm p aliquem audientem & intelligentem, q ipse legem non vadiavit, cū in hoc casu habeat comitatus recordum, sicut in aliis pluribus casibus, quia si hoc facere posset, eadem ratione dedicere posset quilibet contra recordum comitatus de viso petito, & warranto vocato, & cognitionibus, & attachiamentis, & hujusmodi, & inde sequeretur quòd nullum placitum terminaretur in comitatu. Hoc tamen videtur esse contra eos, qui dicunt quòd cōm non habet recorda, cui contradici non possit per unum audientem & intelligentem.

f. 157. Ad quod notandum, quòd null<sup>9</sup> potest in comitatu vel alibi aliquid dedicere, de recordo adversarii sui, 5. Quod non potest quis nec de recordo illo aliquid augere vel diminuere, ad

<sup>1</sup> "in eodem defaulta, quem fecit." MS. Rawl. C. 159.

law, up to the next county court, at which each may essoin himself, if he pleases. And if on the day of proving the law any one of the twelve be absent, or if an exception can be made against any of the aforesaid, that they are not suitable persons to prove the law by reason that they are villeins, or otherwise unfit, then the lord shall be in mercy and shall restore the losses as before. And it happens repeatedly that the lord may safely deny the detention against bail and surety, but not the unjust seizure, and in which case each will be in the mercy of the viscount, as well the lord as the tenant, the lord on account of his unjust seizure, and the tenant on account of his false claim for an unjust detention.

If the lord after having waged his law has made default, he shall be distrained to come at the next county court to hear his judgment concerning the default, at which county court, whether he has come or not, the tenant ought to have his beasts delivered up to him, inasmuch as the lord has failed in establishing his law, and after such distraint, the defendant shall have no essoin in hatred of the default which he has made, nor can he deny the county court, by some one hearing and understanding it, that he did not wage his law, since in this case the county court has a record, as in several other cases; because if he could do this, by the same reason he might deny anything against the record of the county court concerning a petition of view, and a summons to warrant, and recognitions, and attachments, and such like, and hence it would follow that no plea would be determined in the county court. This however seems to be against those, who say that the county court has not a record, to which contradiction may not be made by a person hearing and understanding the proceedings.

4.  
If the lord  
after the  
wager of  
law has  
made de-  
fault.

Upon which it is to be noted, that no one may in the county court or elsewhere deny anything in the record of his adversary, nor add to nor detract from anything in

f. 157.  
5.  
That a  
person may

aliquid  
dedicere  
de recordo  
adversarii.

damnū ipsius adversarii sui : quia si hoc, sic sequere  
tur inconveniēs, q̄ quicquid boni adversarius suus dice-  
ret pro se, amovere posset, & in pej<sup>9</sup> convertere. Sed  
de recordo suo proprio in cōm recitato inde augere  
poterit vel diminuere, sed totum dedicere non potest,  
nec ea quæ sunt de substantia negotii, vel principalia  
cum captionē adversarii, verbi gratia. Sit qui petat  
quandam terram de seysina antecessorum suorum p  
verba duellum facientia, & nominaverit tempus regis  
Richardi, & q̄ expletia cepit ad valentiam viginti so-  
lidoꝝ, hoc ad alium comitaꝝ dedicere potest, & dicere  
q̄ petiit de seysina antecessorum suorum de tempore  
regis I. & ita mutare q̄ petiit de tempore regum  
Richardi & Johannis simul, & ita addere vel augere,  
& quòd expletia cepit ad valentiam quinq, solidos &  
sic minuere, & statim hoc probare debet p unum au-  
dientem & intelligentem, qui incontinenti paratus sit  
hoc probare per corpus suum si curia consideraverit.  
Et sic poterit quis proprium recordum mutare, au-  
gere, & minuere, quia ex hoc nullū damnum habebit  
adversarius, quia non sunt multū de substantia  
negotii.

6.  
De officio  
vicecomi-  
tis.

Officium verò vic. est, si quis conqueratur de in-  
justa captionē, vel injusta detentione contra vadium  
& plegium, quòd cū breve domini regis supervene-  
rit & receperit, quòd tale est. Rex vic. salutem. Præ-  
cipimus tibi, quòd sine dilatione replegiare facias tali  
averia sua, quæ talis cepit & injustè detinet ut dicit,  
& postea eum inde justè deduci facias, ne ampliùs  
inde clamorem audiamus p defectu justitiæ. Teste &c.  
vel etiam ad querelam alicujus sine brevi (accepta

the record, to the damage of his adversary, for if this <sup>not deny anything in the record of his adversary.</sup> were allowed, this inconvenience would follow, that he might remove everything which his adversary might say which was good for himself, and alter it for the worse.

But concerning his own record recited in the county court he may add to or diminish from it, but he cannot deny the whole of it, nor those things which are of the substance of the affair or the principal things with the seizure of the adversary. For illustration: Let there be some one who claims a certain land from the seysine of his ancestors by words constituting a duel, and shall have named the time king Richard, and that he has taken profits of the land to the value of twenty shillings, he may deny this at another county court, and say that he claims it upon the seysine of his ancestors in the time of king John, and he may thus alter what he claimed from the time of king Richard and king John together, and thus add or increase, and that he has taken profits to the value of twenty-five shillings, and so diminish, and forthwith prove this by a witness who heard and understood it, who is ready forthwith to prove it by his body, if the court so directs. And thus a person may alter his own record, and add to it and take away from it, because his adversary will incur no loss from it, because they are not much of the substance of the business.

But the office of the viscount is, if any one complains of an unjust seizure or an unjust detention against bail and surety, that the writ of the lord the king has supervised and he has received it, which is of this tenor: The king to the viscount greeting: We enjoin you that without any delay you cause to be restored to such an one on surety his beasts which so-and-so has seized and detains unjustly, as he says, and afterwards cause him to be justly conducted thence, that we may not hear his clamour for failure of justice. Witness &c., or likewise at the complaint of any one without a writ (security having

6.  
Of the  
office of the  
viscount.

Britton, i. prius ab eo securitate de prosequendo) in ppria psona  
 ch. xxviii. sua, si ad hoc intendere possit, accedat vic. ad locum  
 § 2. ubi averia detēta sunt, ut dicitur, vel si ipse vic. non

possit, mittat servientē suum, & statim cūm venerit, petat visum de averiis illis ubicunq; inclusa fuerint, & si sit aliquis contradictor vel qui velit contradicere q inde visum habere nō possit, vel ppter hoc in eum  
 b. § 4. man<sup>9</sup> violentas injecerit, statim levet hutesiū & clamorem, & cum hutesio & clamore capiat delinquentes, sicut illos qui sunt manifestē cōt pacem dñi regis, & in gaolam projiciat, quousq; doñ rex inde pceperit voluntatem suam, & averia capta deliberet, si inveniātur: si autem inveniri non possunt, eò q alibi fugata sunt fortē, vel extra cōm in fraudem, & captor terrā habuerit in cōm & catalla, capiat serviens dñi regis de averiis illius in duplum, & illa detineat, donec averia sic abducta reducantur. Sed quid si captor nullam terram habuerit in cōm nec catalla, quid agendum erit? cūm potestas vic. non extendatur usq; ad alium cōm, & hoc fiat in fraudem ad impediendā vic. potestatem, tunc recurrendum est ad potestatem regis, & fiat tale breve.

7. Rex vic. salutem. Quia A. fecit nos securos, vel aliter. Si A. fecerit te securū de &c. Pone p vadiū & salvos plegios B. q sit coram justitiariis &c. apud Westm tali die, ostensurus quare cepit averia ipsius A. in cōm tali, ubi idem B. non habet terras nec tenementa, licet habeat feoda, & ipsa fugavit à prædicto cōm tali, usque ad cōm tuum in fraudem extra  
 Breve de attachi-  
 endo,  
 quare  
 cepit  
 averia et  
 fugavit  
 extra comi-  
 tatum.  
 f. 157 b. potestatem vic. nostri talis, & ibidem ea detinet contra



been previously taken from him for the prosecution of the suit). In his own person, if he can attend to this, let the viscount go to the place where the beasts are detained, as it is reported, or if the viscount cannot go himself, let him send his own serjeant, and immediately when he has come to the place, let him request a view of the beasts, wherever they are shut up, and if there be any contradictor or person who would oppose his having a view of them, and such person shall on that account lay violent hands upon him, let him at once raise the hue and cry, and with the hue and cry seize the delinquents, as persons who are manifestly breaking the peace of the king, and let him cast them into gaol, until the lord the king has given directions as to his will in the matter, and let him release the beasts seized, if they be found, but if they cannot be found, inasmuch as by chance they have been driven elsewhere, or even beyond the county in fraud [of the jurisdiction], and the seisor has land in the county and chattels, let the serjeant of the lord the king take of the seisor's cattle double the number, and detain them until the beasts so driven away are brought back. But what if the seisor has no land or chattels in the country, what is to be done? Since the power of the viscount does not extend to another county, and this is done in fraud to impede the power of the viscount, then recourse must be had to the power of the king, and let such a writ issue.

The king to the viscount greeting: Because A. has assured us, or otherwise because B. has assured you &c. Put under bail and safe pledges R. that he should present himself before our justices &c. at Westminster on such a day, to show cause why he has taken the beasts of A. in such a county, where the said B. has no lands nor tenements, although he has feuds, and has driven them from such county aforesaid as far as your county in fraud beyond the power of so-and-so our viscount, and there

7.  
A writ to  
attach,  
because he  
has seized  
beasts, and  
has driven  
them be-  
yond the  
county.

pacem nostram, ut dicit. Eodem modo fiat breve, si hoc fecerit ad gravamen tenentis sui. Cùm in comitatu, ubi tenens degerit, feodum habuerit & curiam capitalem, ad quā tenens sectam debuerit, cùm hoc aciat de voluntate & in fraudē, & non de necessitate p defectu curiæ, & tunc sic: ostensurus quare cepit averia ipsius A. in com̃ tali, ubi idem B. terras habet & tenementa & curiam capitalem, & ipsa fugavit &c. ut suprā. Si autem hæc fecerit ex necessitate & pro defectu curiæ, non erit hoc ei imputandū.

8.  
Cum vice-comes vel serviens regis visum habuerit de averiis captis, sine impedimento & contradic-

tione, statim faciat ea deliberari querēti, & statim det utriq; eorum diem ad proximum com̃, ut ille qui cepit averia, quorum captio dedici non poterit contra recordum vicecom̃ vel servientis, sive justa fuerit sive injusta, ostendet rationem quare illa justè ceperit, & tunc ille, qui petit, doceat, si possit, quòd injustè. Ad quem comitatum nullum de jure competeret captori essonium, cùm injusta captio & detentio cont̃ vadium & plegium dici poterit quædam roberia contra pacem domini regis, etiam plus quàm nova disseysina. Cùm verò uterq; præsens fuerit in com̃, tunc dicat captor q̃ justè cepit, & p considerationem curiæ suæ, pro servitio, quod idem querens & tenens suus ei debuit & ei injustè detinuit, & inde poterit vocare curiam suam ad warrantum, si voluerit, & benè defendat, q̃ illa nunquam detinuit contra vadium & plegium. Ad quod querens respondere poterit, quòd illa injustè cepit & detinuit, quia cū ad curiam ipsius captoris domini sui summonitus esset ad respondendū ei de servitiis &

detains them, as he says, against our peace. In the same manner let a writ issue, if he shall have done this for the aggrievance of his tenant. When in the county, where the tenant lived, he has a feud and a chief court, to which the tenant owes suit, when he shall do this of his own will and in fraud, and not of necessity for the want of a court, and then so: in order to show why he seized the beasts of A. in such a county, where the said B. has lands and tenements and a chief court, and drove them &c. as above. But if he has done this from necessity and for want of a court, this will not have to be imputed to him. f. 157 b.

But when the viscount or the serjeant of the king has had a view of the beasts seized without impediment or contradiction, let him forthwith cause them to be delivered to the complainant, and let him forthwith give to each of them a day at the next county court, that he who has seized the beasts, whose seizure cannot be denied against the record of the viscount or of the serjeant, whether it be just or unjust, shall show cause why he has seized them justly, and then let him, who claims them, show, if he can, that he has seized them unjustly. At which county court no essoin is allowable to the seizor of right, since an unjust seizure and detention against bail and surety may be called a kind of robbery against the peace of the king, even more than a novel disseysine. But when both shall be present in the county court, then let the seizor say that he has justly seized, and by direction of his own court, for a service which the said complainant his tenant owed to him and unjustly detained from him, and thereon he can call his court to warrant him, if he wishes, and he may well deny that he has ever detained them against bail and surety. To which the claimant may answer, that he took the beasts and detained them unjustly, because when he had been summoned to the court of the seizor his lord to answer to him concerning the services and

8.  
When the viscount or a serjeant of the king has had a view of the beasts seized without impediment.

consuetudinibus, ipse respondit q nullum servitium ei tale debuit, & iudicium petiit, si debuit inde respondere sine brevi & præcepto dñi regis, de sicut<sup>1</sup> hoc tetigit liberum tenementū suum. Et super hoc nihilominus cepit idem dñs suus averia sua, & eum distrinxit p servitio suo, q non cognovit: & cū averia sua peteret deliberari quietē, illa noluit deliberare, & inde pducatur sectam suam sufficientem, scilicet probos homines, qui præsentes fuerint in curia, & qui benè examinati, si concordēs inveniantur, tunc summoneatur curia, quæ si, cū venerit, concordans fuerit cum secta, tunc refert utrum captor districtiōē fecerit per iudicium curiæ, vel propria voluntate. Si autem per iudicium curiæ, tunc erit curia in misericordia pro falso iudicio, & averia remanebunt deliberata. Si autem de propria voluntate, & curia sua ei defecerit de warranto, tunc erit ipse in misericordia, & remanebunt averia deliberata. Sed quid si curia recordetur, q querens servitium petitum recognovit in curia ipsa, & iudicium advocet, & quod justa fuit captio propter cognitionem, tunc querens recordum illud dedicere poterit, & cognitionem contra recordum curiæ. Esto quod in curia domini nullum fuit placitum de servitio, sed immediatè perventa est querela ad vicecomitem de injusta captione, & quo casu, si dominus cognoscat q justè cepit & p servitio suo, ut prædictum est, tunc aut querens omnino dedit servitium illud, & q illud nūquā fecit, vel cognoscit q illud aliquādo fecit sed tamē injustè, quia chartā habet quæ ipsum inde acquietat. Si autē omnino dedixerit, tunc quia cōm nō habet potestāt ulterius cognoscendi, nec iudicare poterit utrum servitium debitum sit vel non, remaneant averia deli-

Britton, i.  
ch. xxviii.  
§ 20.  
Fleta, 100.

f. 58.

<sup>1</sup> "desicut," MS. Bawl. C. 160.

the customs, he replied, that he owed him no such service, and he requested a judgment, if he ought to reply to him without a writ and order of the lord the king, inasmuch as this touched his freehold. And upon this, nevertheless, the said lord seized his beasts, and distrained him for the service, which he did not acknowledge, and when he requested his beasts to be quietly released to him, he refused to release them, and thereon he produced his sufficient sect, men of probity, who were present in court, and who may be well examined, and if they be found to agree, then let a court be summoned, which after it has come, if it shall be found to agree with the sect, then it is of importance whether the seisor has made the distress by the judgment of the court, or of his own will. But if by the judgment of the court, then the court shall be in mercy for a false judgment, and the beasts will remain released. But if of his own will, and his court has failed to warrant him, then he himself shall be in mercy, and the beasts will remain delivered. But what if the court should record, that the complainant acknowledged the service claimed in the court itself, and should invoke judgment, and that the seizure was just on account of the acknowledgment, then the complainant may deny the record and the acknowledgment against the record of the court. Let it be, that in the court of the lord there was no plea concerning a service, but a complaint has come immediately to the viscount concerning an unjust seizure, and in which case, if the lord acknowledges that he has justly seized and for his service, as aforesaid, then either the complainant altogether denies that service, and that he has never done it, or he acknowledges that he has sometimes done it, but unjustly, because he has a charter which acquits him of it. But if he altogether denies it, then since the county court has no power of further cognisance, nor can judge whether the service be due or not, let the cattle remain released, and let the lord re-

f. 158.

berata, & dñs sibi perquirat, q̄ faciat ei servitia & consuetudines quæ ei facere solet, si recenter fuerit in seysina, propter seysinam recētem. Et quo casu, recuperabit omnia damna sua, quia agit tantum de possessione. Si autem de longinqua & remota seysina, tunc dicatur, quæ ei facere solet & debet, & utrumq̄ jus, tam possessionis quam proprietatis in iudicium deducatur p̄ breve de recto, ubi nulla damna recuperabit. Si autem cognoscat querens, q̄ aliquando fecit ei servitium sed injustè, tunc quia cognoscit seysinam domini, justam vel injustam, retornentur averia, donec satisfecerit domino de servitio q̄ cognoscit, propter seysinam, licet dominus jus non habuerit, & querens sibi perquirat breve, quod dominus non exigat ab eo servitium & consuetudines quæ ei facere non debet, eò quod illa de jure facere non debet, & idè si seysina illū gravat, liberabit ipsum actio super jure. Item cognoscere poterit captor, q̄ averia justè cepit, quia cū habeat fundum suum liberum, ita q̄ nec ipse querens nec alius communiā in eadem habere possit, nec alium servitutem, & cū idem querens immisisset averia sua, cū jus non haberet immittendi, & pluries esset ei prohibitum ne immitteret, ipse nihilominus immisit contra prohibitionem, & ita cepit averia sua justè, paratus ei illa restituere si velit ab hujusmodi injuria abstinere, q̄ quidem facere penitus recusavit, nec voluit averia sua tali modo recipere. Ad quod querens, quod injustè, quia ipse ibi communiam habere debet, & semper habuit, & hoc paratus est docere, ubi, & quando &c. Et ex quo noluit illa quietè sine plegio dimittere, idè noluit tali modo

Britton, i.  
ch. xxviii.  
§ 25.  
Fleta, 101.

quire for himself that he do to him the services and the customs which he is accustomed to do, if he has recently been in seysine of them, on account of the recent seysine, and in which case he will recover all his losses, because he proceeds only upon the possession. But if he proceeds upon a distant and remote seysine, then let there be said, what he is accustomed and ought to do for him, that both rights as well that of possession as of property may be brought into judgment by a writ of right, when he shall recover no losses. But if the complainant acknowledges that he has once done for him a service, but unjustly, then because he acknowledges the seysine of the lord, just or unjust, let the cattle be returned, until he has satisfied the lord for the service which he acknowledges, on account of his seysine, although the lord may have no right, and let the complainant require a writ, that the lord may not exact from him a service and customs, which he ought not to do for him, inasmuch as he ought not to do them of right, and therefore, if the seysine burdens him, the action upon the right shall release him. Likewise the seizor may acknowledge that he has taken the cattle justly, because when he has his own land free, so that neither the complainant nor any person else has a right of common in it, nor any other servitude, and when the said complainant has turned in his cattle, when he had no right of sending them in, and he has been several times prohibited to send them in, he has nevertheless sent them contrary to the prohibition, and thus he has seized the cattle justly, being ready to restore them, if he is willing to abstain from this injury, which he has refused altogether to do, nor has he been willing to receive back his cattle on these terms. To which the complainant, that he has unjustly seized them, for he ought to have a right of common, and has always had the right, and he is prepared to show this, where and when &c. And since he was unwilling to release them quietly without a surety, therefore he himself was

plegium invenire. Et quia comitatus non habet potestatem procedendi ulterius, remaneant averia deliberata, & si querens uti voluerit cum jus non habeat, si dominus aliter se defendere non poterit, habeat breve contra ipsum de nova disseysina de libero tenemento suo, & si querens jus habeat utendi, & dominus eum non permittat, habeat breve versus dominum de communia pasturæ suæ.

9. Dicere etiam poterit captor, q̄ justè cepit averia sua, quia illa invenit in damno suo, & secundum legem & consuetudinē regni imparcavit illa, donec damnum suum ei esset emendatum, & nō alio modo. Et ipse querens noluit damnum emendare nec securitatem dare, vel nec illa unquam petiit p̄ vadium nec p̄ plegium, vel si petiit, oblata fuerunt ei tali modo, ut p̄dictum est, & non alio, & inde producat sectam. Et si querens hoc precisè negaverit, defendat se p̄ legem suam, vel si dicat, q̄ si prædicta occasione capta fuerunt & justè, tamen detenta fuerunt injustè contra vadium & plegiū, quia ille querens venit ad ipsum captozem cum p̄bis hominibus, & coram eis paratus fuit ei emendare damnum suum p̄ visum eorundem, & ipse hoc recusavit, & nihilominus averia sua detinuit injustè contra vadium & plegium. Et si inde habuerit bonā sectam & sufficientē, ille captor, si hoc precisè defenderit, contra vadiet legem, & sic ex utraq̄ parte poterunt leges vadiari.

10. Item si querēs dicat quod injustè cepit averia sua, quia nulla damna ei fecerunt, nec cum obtulisset ei satisfacere de dānis, aliquod dānum ei ostendit, tunc oportet q̄ captor sectam producat sufficientem, q̄ illa cepit in damno suo, & idē justè: vel p̄ servitio suo recognito, & injustè detento. Si autem ad servitium respondet querens, cum illud recognoverit, q̄ averia

De respon-  
sione cap-  
toris, quod  
juste, quia  
in damno  
suo.  
Britton, i.  
ch. xxviii.  
§ 9.  
Fleta, 101.  
  
Si lex  
vadiatur ex  
utraq̄  
parte ita,  
quod que-  
rens dicat,  
quod juste.  
f. 158 b.



unwilling on such terms to find a surety. And because the county court has not the power of proceeding further, let the cattle remain delivered, and if the complainant wishes to use the right, since he has not the right, if the lord cannot otherwise defend himself, let him have a writ against him of novel disseysine of his free tenement, and if the complainant has the right of use and the lord does not permit him, let him have a writ of common pasture against the lord.

But the seisor may say, that he has justly seized the cattle, because he found them doing him damage, and according to law and custom impounded them, until his damage was made good, and not in any other way. And the complainant refused to compensate his damage or to give security, or did not seek to have them released upon pledge and surety, or if he did so seek, they were offered to him in such a manner, as above said, and not otherwise, and thereupon he produces his sect. And if the claimant precisely denies this, let him defend himself by his law, or if he say, that if on the aforesaid occasion they were seized justly, nevertheless they were detained unjustly against bail and surety, because the complainant came to the seisor himself with men of probity, and in their presence was ready to compensate the damage upon their view of it, and he refused this, and nevertheless detained his cattle against bail and surety. And if he thereupon has a good and sufficient sect, let the seisor, if he precisely denies this, wage his law against it, and so their laws may be waged on either side.

9.  
Of the answer of the seisor, that he has justly seized, because he was suffering damage.

Likewise if the complainant says, that he has unjustly seized the cattle, because they have done him no damage then it is requisite that the seisor produce a sufficient sect, that he seized them whilst doing him damage, and therefore he justly seized them: or for his service acknowledged and unjustly kept back. But if the complainant answers in regard to the service, when he

10.  
If the law be waged on either side, so that the complainant say that he claims justly.  
f. 158 b.

injustè capta sunt, quia totum fecit servitium, ita q nihil ei à retro est, si inde habeat sectam sufficientem, quæ sufficiat ad probationem, injusta erit captio, nec se defendere poterit captor per legē.

11.  
Item si  
captor di-  
cat, quod  
juste.

Item dicere possit captor, q justè cepit, quia quidam talis questus fuit de querente de tali injuria, sicut de verberibus & sanguine effuso, vel de tali debito sine brevi. Et unde talis summonitus fuit, q esset ad certum diem in cuius sua inde responsurus, ad quem diem ipse non venit, nec se essoniavit, & unde p considerationem curiæ meæ districtus fuit, q esset ad alium diem. Et ad quem diem non venit, & ita q aliàs per considerationem curiæ præceptum fuit quòd averia primò capta retinerentur, & plura caperentur, & ita per iudicium curiæ justè capta fuerunt, & non detenta injustè contra vadium & plegium, quia nunquā petita fuerunt, vel sic: Cùm primò post summonitionem capta essent averia p default ipsius querentis, & petita per plegium, et deliberata essent p sic, q veniret ad alium diem rationabilem inde responsurus, & nisi veniret, q averia retournarentur, & ad diem illū nō venit, & retornata fuerunt averia per default suam, & ita justè capta. Ad quæ respondeat querens, quòd injustè & tali ratione (quam dicat si sciat). Et sic justè capi possunt averia vel injustè, assignata ratione: quia semper inquirendū erit, qua occasione capta fuer, & si justè sive injustè capta fuerunt, tamen cont vadium & plegium denegari non debent, dum tamen ille, cujus fuerint, parat<sup>9</sup> sit facere q de jure facere debebit. Et

admits it, that the cattle have been unjustly seized, because he has performed the entire service, therefore there is no arrear on his part, if he thereupon has a sufficient sect, which may suffice for proof, the seizure will be unjust, nor can the seizor defend himself by his law.

Likewise the seizor may say, that he justly seized them, because such an one has complained of the complainant concerning such an injury, as concerning blows and bloodshed, or concerning such a debt without a writ. And when such a person has been summoned, that he should be at a certain day in his court to make answer thereon, on which day he did not come nor essoined himself, and therefore upon the decision of my court he was distrained, that he should be there on another day. And on which day he did not come and so on another occasion by the decision of the court it was ordered, that the cattle first seized should be retained, and more be seized, and so by the judgment of the court they were justly seized, and not unjustly detained against bail and surety, because they were never claimed; or thus: when first after the summons the cattle were seized on account of the default of the complainant and claimed on surety, and were released on these terms, that he should come on another reasonable day to answer thereupon, and unless he should come, that the cattle should be returned, and on that day he did not come, and the cattle were returned through his default, and so justly seized. To which the complainant answers, that they have been seized unjustly and in such a way (which let him state, if he knows it). And so the cattle may be seized justly or unjustly, reason having been assigned: because it will always have to be inquired on what occasion they were seized, and if they were seized justly or unjustly, nevertheless they ought not to be refused against bail and surety, provided always that he, whose property they were, is prepared to do what he ought to do of right.

11.  
Likewise  
if the  
seizor say  
he seized  
justly.

notandum q̄ injusta captio emendari poterit per vicinos, injusta autem detentio non, quia hoc est manifestè contra pacē dñi regis, & contra coronam suam.

12. Si serviens alicujus cepit averia alicujus in absentia domini sui. Sed quid si serviens alicujus in absentia domini sui cepit averia alicujus tenentis domini sui, & ipse tenens conqueratur de serviente q̄ averia sua injustè cepit, & contra vadium & plegium detinuerit, & serviens ille curiam domini sui vocaverit ad warrantū, & curia ei warrantizaverit de servitio q̄ non recognoscit? serviens liberabitur, & curia de facto suo respondebit. Sed nunquid poterit curia sine domino respondere, cū servitium tangat ipsum dominum? immo: ita q̄ judicium emendetur. Si autem averia capiantur p̄ servientem sine judicio curiæ, & postea petita fuerint ab ipso domino, cū p̄sens fuerit, & ipse ea vetuerit p̄ vadium & plegium, uterq̄ tenebitur, ut videtur, unus de captione, & alter de vetito namio. Et licet dominus ipse advocaverit captionē serviētis, servientem non liberat, sed onerat seipsum, & uterq̄ tenetur de facto servientis: serviens, quia cepit, & dominus dupliciter, quia advocat factum servientis, & quia vetat. Item sunt qui dicunt, quòd non tenetur quis respondere de vetito, antequam convincatur captio injusta; ad quod dico,<sup>1</sup> quamvis captio justa vel injusta, tamen vetitum semper erit injustum, aliud tamen erit si captio omnino nulla, quia ubi nihil omnino captum, nihil erit ex eo quod sit vetitum. Item etsi captum, tamen nihil petatum, & si nihil petatum, tunc non erit aliquid vetitum. Item esto, quòd nihil actum sit per curiam,

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<sup>1</sup> "dico," omitted, MS. Rawl. C. 160.

And it is to be noted, that an unjust seizure ought to be amended by the neighbours, but not an unjust detention, for this is manifestly against the peace of the lord the king, and against his crown.

But what if the servant of any one, in the absence of his lord, has seized the cattle of any tenant of his lord, and the tenant himself complains concerning the servant that he has seized his cattle unjustly and detained them against bail and surety, and that servant has called the court of his lord to warrant, and the court has warranted to him concerning the service? The servant shall be released, and the court shall answer for its own act. But cannot the court answer without the lord, when the service touches the lord himself? Yes, so that the judgment be amended. But if the cattle be seized by the servant without a judgment of the court, and have been claimed by the lord himself when he was present, and he himself has refused them on bail and surety, each shall be liable, as it appears, the one for the seizure, and the other for the refusal of release. And although his lord himself has avowed the seizure of his servant, he does not acquit the servant, but he charges himself, and each is liable for the act of the servant, the servant because he seized it, and the lord doubly, because he avows the act of his servant, and because he refuses [the release of the thing seized]. Likewise there are some who say, that a person is not obliged to answer concerning the refusal (the vee) until the seizure is proved to be unjust; to which I say that, although the seizure be just or unjust, nevertheless the refusal will always be unjust; it will be different, however, if the seizure be entirely null, for where nothing at all has been seized, nothing can arise upon the fact that it has been refused. Likewise, although it has been seized, nothing however may have been claimed, and if not claimed, then nothing will have been refused. Likewise let it be, that nothing has been

12.  
If the  
servant of  
any one  
has seized  
the cattle  
of another  
in the  
absence of  
his lord.

f. 159. nec per dominum curiæ, sed tantū p servientē, ut si serviens sine dño vel sine cū talliaverit tenētes dñi sui, sicut villanos qui sunt liberi, vel dicāt se esse liberos fortè, cū sint servi, & postea cū inde autoritate ppria fecerit districtiōē, & averia ad querelam tenentium fuerit deliberata p vic. ad vadiū & plegium, & querela facta sit tantū de serviente sine dño, quæritur an serviens respondere possit vel debeat sine dño, & rem iudicium deducere sine eo? quo casu, inquirendū erit à dño utrum factum servientum suorum advocaverit vel nō, si autem non, tunc poterit dñs hoc emēdare, q si advocaverit, vel non emēdaverit, faciat injuriam illam suam propriam, si ibi fuerit injuria. Et cū advocaverit, poterit descendere ad inquisitionem de tallagio, utrum justè petatur vel injustè, maximè si loquela posita fuerit in curia dñi regis. Casus de Petro de Sabaudia, & tenentibus suis coram consilio domini regis apud Westm̄ ad scaccarium anno regni regis H. xlvī, de termino Paschæ paulò ante Ascensionē.<sup>1</sup>

13. Cū autem averia semel fuerint per iudiciū comitat<sup>o</sup> deliberata, iterum capi non debent p eodem, antequam placitum terminetur. Et si iterum capta fuerint, vicecom̄ ea iterum deliberari faciat cū damno capientis p tale breve. Rex vic. salutem, monstravit nobis A. quòd cū breve nostrum nuper tibi detulisset de averiis suis replegiandis, quæ B. cepit & injustè detinuit (ut dicit), & tu eadem averia eidem A. replegiasses, & ei dedisses diem ad proximum comitaž tuum, & prædictum B. attachiasses ad respondendum super hoc

Cum averia  
alicujus  
semel  
fuerint per  
iudicium  
deliberata  
et iterum  
capta,  
breve quod  
deliberen-  
tur.

<sup>1</sup> "Casus de Petro de Sabaudia," down to "ante Ascensionem," is omitted in MS. Rowl. C. 160, also in MS. Galeazzo. Petrus de Sabaudia died A.D. 1269, Nova Fœdera, i. p. 482. On the other hand the case is mentioned in MS. Rowl. C. 159

with another date, viz., "anno regni regis H. xlv.," and with a slight mark prefixed to the passage at the commencement, as if it were a note incorporated into the text. MS. Godbold has, "Casus scilicet de Petro de Sabaudia, &c.," with the

done by the court, nor by the lord of the court, but only by the servant, as if the servant without the lord or without the court has levied a tax (talliage) upon the tenants of his lord as villeins who are free, or who say that they are free perchance, when they are serfs, and afterwards when he has of his own authority made a distress, and the cattle upon the complaint of the tenant have been released by the viscount upon bail and surety, and a complaint has been made only respecting the servant without the lord, it is asked whether the servant can or ought to answer without the lord, and to bring the case to judgment without him? In which case it will have to be inquired from the lord, whether he will avow the act of his servants or not, but if not, then the lord may amend it, but if he has avowed or not amended it, he makes the injury his own, if there has been there any injury. And when he has avowed it, he may descend to an inquest concerning the talliage, whether it was justly claimed or not, more especially if the argument has been laid in the court of our lord the king. The case of Peter of Savoy and his tenants, before the council of the lord the king at Westminster in the exchequer, in the forty-sixth year of the reign of king Henry, in Easter term, a little after the Ascension. f. 159.

But when the cattle have been once released by the judgment of the county, they ought not to be again seized, for the same thing, before the plea is terminated. And if they be again seized, the viscount shall cause them to be again released with damages against the seizer by a writ of this kind: The king to the viscount greeting. A. has shown to us, that when he placed before you our writ concerning the releasing his cattle on sureties, which B. had taken and unjustly, as he says, detained, and you had released to A. his cattle upon sureties, and had given him a day at your next county court, and had attached the said B. to answer upon this to the said 13.

When the cattle of any one have once been released by a judgment, and again seized, a writ that they shall be released.

eidem A. prædictus B. post attachiamentum illud averia ejusdem A. iterum cepit, eadem occasione qua ea prius ceperat, vel occasione alicujus talis, quod tangit illud placitum principaliter, & illa detinet sicut prius. Et quia hoc est manifestè contra pacem nram, tibi p̄cipimus, quòd averia ipsius A. sine dilatione deliberari facias, quousq; capitale placitum inde int̄ eos terminetur. Et si inveneris q̄ prædictus B. averia ipsius A. iterum cepit ea occasione qua ea prius cepit, & idem A. fecerit te securum &c., tunc habeas coram justitiariis nostris ad primam assisam &c. corpus ipsius B. ad respondendum prædicto A. de secunda captione, & habeas ibi hoc breve. Teste &c. Et unde, sive prima captio justa fuerit sive injusta, secunda omnino erit injust. vel aliter: Et si inveneris q̄ p̄dictus B. averia ipsius A. iterum cepit ea occasione qua prius ea ceperat, tunc corpus ipsius B. habeas coram te, & coram custodibus placitorū coronæ nr̄æ ad p̄ximum cōm tuum. Et si p̄ ballivos tuos, p̄ quos averia p̄dicti A. secundò replegiati fuerunt, & p̄ alios legales homines convinci poterit de secunda captione, & p̄ una eademq; occasione, tunc p̄dictum B. ita castiges p̄ gravem misericordiam, ut castigatio illa in casu consimili aliis timorem tribuat delinquendi. Teste &c. Et quo casu, semper oportebit q̄ inculpatus defendat secundā captionē & detentionē, & damnum & totum, secund q̄ fuerit inculpatus, cōtra querentem & cōtra sectā suā, si sectā p̄duxerit sufficientem, cum ei nō sit credendū ad simplicē vocē suā. Et si simpliciter <sup>1</sup> defendet p̄ legē se defendat cōt̄ sectā, poterit tamē inculpat<sup>2</sup>

date "anno regni H. xlvii<sup>o</sup>." The Editor of the printed book of 1569 cites a MS. with the date "anno regni H. lvi." which is clearly an error of the scribe. There is no trace of the case of Petrus de

Sabaudia in the Public Record Office.

<sup>1</sup> "Se defenderit." MS. of the Middle Temple, which also ignores the case of Petrus de Sabaudia.



A., the aforesaid B. has after that attachment again seized the cattle of the said A., on the same grounds upon which he seized them before, or on grounds of a somewhat like nature, which touch that plea principally, and he detains them as before. And because this is manifestly against our peace, we enjoin you that you cause the cattle of the said A. to be released without delay, until the chief plea thereupon is determined between them. And if you shall find that the aforesaid B. has taken the cattle of the said A. on the same grounds, on which he seized them before, and the said A. has given you security &c., have then before our justiciaries at the first assise the body of the said B. to answer to the aforesaid A. concerning the second seizure, and have there this writ. Witness &c. And thereupon, whether the first seizure has been just or unjust, the second will be altogether unjust or otherwise: and if you shall find that the aforesaid B. has again seized the cattle of the said A., on the same grounds on which he previously seized them, then have the body of the said B. before you, and the keepers of the pleas of our crown at your next county court. And if by your bailiffs, by whom the cattle of the aforesaid A. have been a second time released on security, and by other loyal men it can be proved concerning the second seizure, and for one and the same cause, then correct the aforesaid B. by a heavy amercement, that his correction may cause to others a fear of offending in a similar case. Witness &c. And in which case, it will always be necessary that the culprit should defend the second seizure and detention, and the damage, and the whole, according to what he has been charged with, against the complainant and against his sect, if he has produced a sufficient sect, since he is not to be believed upon his single voice. And if he shall simply defend himself by his law, let him defend himself against the sect, the culprit however may so except and answer

f. 159 b. ita excipere & respōdere, q̄ uterq̄, onerabit̄ ad sectā pducendā, & cū hinc inde fuer̄ secta diligēt̄ examinata, p̄ ea judicabit̄ quæ p̄babilior & verisimilior esse p̄babitur. Et q̄ secta examinare<sup>1</sup> debeat, p̄batur in itinere<sup>2</sup> W. de Ralegh in cōm Leyc. in principio rotuli, de Rogero le Suche: ubi dicitur, q̄ si secta ex parte querētis producat̄, q̄ averia sua injustè capta fuerunt contra vadiū & plegium, & injustè detenta, & responsum sit ex adverso q̄ juste, & ideo, quia capta fuerunt in damno, & cōt̄ vadium & plegium non fuerunt detenta, si cū secta fuerit examinata, non concordat nec deponat secundū intentionem querentis, quia fortè dicit contrarium vel diversum, vel quia nihil scit nisi de auditu, vel quia nihil actum fuit in præsencia eorum qui producuntur, tunc ille, de quo queritur, recedat sine die. Sunt etiam catalla quæ aliquando petuntur nomina<sup>3</sup> averiorum, cū quis in solo alieno opus fecerit manifestū vel manufactum, ut si heyaverit vel fossatum fecerit, vel carucam immiserit, & hujusmodi utensilia vel catalla capiantur, & per vadium & plegium denegata cum petantur, & vicecōm vel ballivus ad querelam ejus cujus fuerint, illa deliberaverit usq̄ ad cōm vel hundredam, ubi cū captor dixerit, quōd justè capta sunt propter opus manifestum in fundo & solo suo injustè & contra voluntatem suam, & alius dicat fundum illum esse suum: quia istud tangit liberum tenementum, nec sciri poterit quis eorum dominus sit, nec comitat̄ habet potestatem

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<sup>1</sup> "examinari," MS. Rawl. C. 160.

<sup>2</sup> "de itinere," *id.*

<sup>3</sup> "sub nomine," *id.*

that each shall be bound to produce a sect, and when the sect on either side has been diligently examined, judgment shall be given for that which shall be proved to be more probable and more truthlike. And that the sect ought to be examined is proved in the iter of William de Raleigh in the county of Leicester at the commencement of the roll, concerning Roger le Suche, where it is said that if a sect is produced on the part of the complainant, that his cattle have been seized against bail and surety, and unjustly detained, and it be answered on the opposite side, that they have been justly seized, and for that reason, because they were seized in doing damage, and they have not been detained against bail and surety, if when the sect has been examined, it does not agree with nor depose according to the statement of the complainant, because perhaps it says the contrary or something different, or because it knows nothing except on hearsay, or because nothing was done in the presence of those who are produced, then let him, who is the object of the complaint, withdraw without a day. There are also chattels, which are sometimes claimed in the name of cattle, when a person has made on other's land a work manifest or made with the hand, as if he shall have made a hedge or a ditch, or has put his plough into the ground, and such utensils or chattels are seized, and when they have been claimed upon bail and surety, they have been refused, and the viscount or the bailiff, at the complaint of the person to whom they belonged, has released them until the next county court or the next court of the hundred, where when the seisor has said, that they have been justly seized on account of a manifest work on his land and soil unjustly and against his will, and the other says that the land is his own: since this question touches a freehold, and it cannot be known who is the lord, and the county court has not the power to hold cognisance of that question, then the complainant must have recourse

Britton, i. cognoscendi, tunc recurrendum erit ad assisam novæ  
ch. xxviii. disseysinæ per illum qui queritur, & retornentur averia  
§ 25.  
Fleta, 101. & utensilia sic capta, & ante captionem assisæ non  
deliberentur, & sic fiat de consimilibus.<sup>1</sup>

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<sup>1</sup> "de similibus," MSS. Rawl. C. 160 & C. 159.

FINIS

TRACTATŪS SECUNDI LIBRI TERTII.

to an assise of novel disseysine, and the cattle and utensils so seized must be returned, and be not released before the holding of the assise, and so let it be done in similar cases.

HERE ENDS THE  
SECOND TREATISE OF THE THIRD BOOK

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## APPENDIX.

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## APPENDIX I.

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ITEM NOVA CAPITULA DE TEMPORE REGIS EDWARDI,  
FILII REGIS HENRICI TERTII. MS. Rawl. C. 160,  
fol. 63 b. col. 1.<sup>1</sup>

Inprimis. Quot et que dominica maneria dominus rex habet in manu sua in singulis comitatibus tam scilicet de antiquis dominicis corone quam de eschaetis et perquisitis. § Que etiam maneria esse solent in manibus regum predecessorum regis, et qui ea tenent nunc, et quo warento, et a quo tempore, et per quem et quomodo fuerint alienata. § De feodis eciam domini regis et tenentibus ejus qui ea modo teneant, et que feoda teneri solent de rege in capite et nunc tenentur per medium, et per quem medium, et a quo tempore alienata fuerint, et qualiter et per quos. De terris etiam tentis de antiquo dominico corone tam liberorum sokammanorum quam bondo-

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<sup>1</sup> These articles of inquiry to be administered by the justices itinerant were issued under the great seal, dated the eleventh day of October, in the second year of the reign of king Edward I., shortly after the king's arrival in England. The version of them which is here printed is contained in MS. Rawl. C. 160, and it differs somewhat from the version contained in the Patent Roll of 2 Edw. 1, m. 5, in Turri

Lond., of which the text is printed at the commencement of the Rotuli Hundredorum published by the Record Commissioners in 1812. See Introduction. They follow in MS. Rawl. C. 160, immediately after the words "De Thesauris Inventis." The three remaining articles, which follow those words in the printed edition of Bracton, fol. 117 b., and conclude the 2nd chapter, are not found in MS. Rawl. C. 160.



## APPENDIX I.

### LIKEWISE THE NEW ARTICLES OF THE TIME OF KING EDWARD, SON OF KING HENRY THE THIRD.<sup>1</sup>

In the first place, how many and what demesne manors our lord the king has in his hand in the several counties, as well, to wit, of the ancient demesnes of the crown, as of escheats and purchases. § What manors also used to be in the hands of the kings the predecessors of the king, and who now hold them, by what warrant and from what time, and by whom and in what manner they were alienated. § Of the fees also of our lord the king, and of his tenants, who hold them now of him in chief, and how many fees each of them hold, and what fees are accustomed to be held of the king in chief, and are now held through a mesne tenant, and through what mesne tenant, and from what time they were alienated, and in what manner, and through whom. Of the lands also held of the ancient demesne of the crown, as well those of free sockmen as of bondmen, whether by bailiffs or by the

<sup>1</sup> This title is more explicit than the title of similar articles which are edited in Tottell's *Magna Carta*, 1556, in which they are printed as a continuation of the *Vetera Capitula* without any date. There are several versions of cognate articles preserved in various MSS. in the Harleian Collection in the British Museum. MS. Harleian 489, for instance, contains the articles issued at a later period, namely, in the eighth year of the reign of King Edw. I., and they are thus entitled, "Capitula

" placitanda coram justiciariis de  
" itinere, anno regni regis Edwardi  
" filii regis Henrici octavo." They  
begin thus, "De veteribus placitis  
" corone que alias fuerunt coram  
" justiciariis et non sunt terminata.  
" De novis placitis coronæ quæ  
" emeruerunt post ultimum iter  
" justitiariorum. De hiis, &c." Tottell's printed copy and all the manuscripts are more or less confused, and the arrangement of the several parts and clauses of the articles varies considerably.

rum, utrum per ballivos aut per eosdem tenentes, et per quos ballivos et per quos tenentes, et a quibus alienata fuerint, qualiter et quo tempore. Simili modo inquiratur de firmis hundredorum, wappentakiorum, et tythingorum, civitatum, burgorum, et aliorum reddituum quorumcunque, et a quo tempore. Quot etiam hundreda, wappentakia, et tythinga sunt nunc in manu domini regis, et quot et que in manibus aliorum, et a quo tempore, et quo warento, et quantum valeat quodlibet hundredum per annum. De sectis antiquis, consuetudinibus, serviciis, et aliis rebus domino regi et antecessoribus suis subtractis, qui ea subtraxerint, et a quo tempore, et qui hujusmodi sectas, consuetudines, servicia, et alia ad dominum regem pertinentia et consueta, sibi ipsis appropriaverint, et a quo tempore, et quo warento. Qui etiam alii a rege clamant habere returnum vel extractas brevium, et qui placita teneant de namio vetito, et qui clament habere wreccum navis, et quo warento, et alias libertates regias, ut furcas, assisas panis et cerevisie, et alia que ad coronam pertinent, et a quo tempore. De his etiam, qui habent libertates per reges Anglie concessas, et eis aliter usi fuerint quam facere debuissent, et a quo tempore et quomodo. Item de libertatibus concessis, que impediunt communem justiciam, et regiam potestatem subvertunt, et a quo concessae fuerint, et a quo tempore. Qui insuper de novo appropriaverint sibi liberas chacias vel warennas sine warento, et similiter qui ab antiquo hujusmodi chacias et warennas ex concessione regis habuerint, et fines et metas earum excesserint, et a quo tempore. Qui etiam domini, aut eorum senescalli vel ballivi quicunque, seu etiam domini regis ministri non sustinuerint executionem mandatorum curie domini regis fieri, aut etiam facere contempserint, vel aliquo alio modo ea fieri im-

same tenants, and by what bailiffs and by what tenants, and by whom they have been alienated, in what manner, and from what time. In the same manner let inquiry be made concerning the fermes of hundreds, of wappentakes and tythings, cities, boroughs, and other rents whatsoever, and from what time. Also how many hundreds, wappentakes, and tythings are now in the hand of our lord the king, and how many and what in the hands of others, and from what time, and by what warrant, and how much each hundred is worth by the year. Of ancient suits, customs, services, and other things withheld from the king and his ancestors, who have withheld them, and from what time, and who have appropriated to themselves such suits, customs, services, and other things pertaining to the lord the king, and by custom due, and from what time, and by what warrant. Also what others claim to have from the king the return or estreats of writs, and who hold pleas of forbidden distress, and who claim to have wreck of the sea, and by what warrant, and other royal franchises, as a gallows, assises of bread and ale, and other things which pertain to the crown, and from what time. Of those also who have franchises granted to them by the kings of England, and have exercised them otherwise than they ought to have done, and from what time and how. Likewise concerning franchises granted, which impede common justice, and subvert the royal power, and by whom they were granted and from what time; who also have appropriated to themselves anew free chaces or warrens without a warrant, and similarly who have had from ancient time chaces of this kind and warrants from a grant of the king, and have exceeded their bounds and metes, and from what time. Also what lords, or their stewards or bailiffs of any kind, or even the officers of our lord the king, have not upheld the execution of the mandates of the court of our lord the king, or have slighted to execute them, and in some other way have

pedierint a tempore Constitutionum factarum apud Marleberidge anno regni domini regis Henrici, patris domini regis nunc, quinquagesimo secundo. Item de omnibus perpresturis quibuscunque factis super dominum regem vel regalem dignitatem, per quos facte fuerint, qualiter, et a quo tempore. De feodis militaribus, cujuscunque feodi, et terris vel tenementis datis vel venditis religiosis vel aliis in prejudicium regis, et per quos et a quo tempore. De vicecomitibus capientibus munera ut consentiant ad concelandum felonias factas in ballivis suis, vel qui negligentes extiterint ad felones hujusmodi attachiandos quocunque favore, tam infra libertatem quam extra. Similiter modo inquiratur de clericis et aliis ballivis vicecomitum, coronatoribus, et eorum clericis et ballivis quibuscunque, et qui ita fecerint tempore regis H. post bellum de Evesham, et qui tempore domini regis nunc. De vicecomitibus et ballivis quibuscunque capientibus munera pro recognitoribus amovendis de juratis et assisis, et a quo tempore. Item de vicecomitibus et aliis ballivis quibuscunque, qui amerciaverint illos qui summoniti fuerint ad inquisitiones faciendas per preceptum domini regis pro defaultis, cum per eandem summonicionem persone venerunt sufficientes ad inquisitiones hujusmodi faciendas, et quantum ceperint et a quibus ceperint occasione predicta, et a quo tempore. Item de vicecomitibus qui tradiderint ballivis extorsoribus, populum gravantibus supra modum, hundreda, wappentak, vel tithingg ad altas firmas, ut sic suas firmas levarent, et qui fuerint illi ballivi, et quibus fuerint hujusmodi dampna illata, et a quo tempore. Item cum vicecomites non debeant facere turnum suum nisi bis in anno, qui pluries fecerint in anno turnum suum, et a quo tempore. Item cum fines pro redisseisinis

hindered their being executed from the time of the Constitutions made at Marlborough in the fifty-second year of the reign of the lord king Henry, the father of the king that now is. Likewise of all purprestures whatsoever made against our lord the king or his royal dignity, by whom they were made, in what manner, and from what time. Of knights' fees, of whose fee soever they were, and of lands or tenements given or sold to persons under religious vows, or to others to the prejudice of the king, and through whom and from what time. Of viscounts taking gifts that they should consent to conceal felonies committed in their bailiwicks, and who have been negligent in attaching felons of this kind through any favour whatsoever, as well within a franchise as without. In a similar manner let inquiry be made concerning clerks and other bailiffs of viscounts, coroners and their clerks and bailiffs of any kind, and who have done so in the time of king Henry after the battle of Evesham, and who in the time of the king who now is. Of viscounts and bailiffs of any kind taking gifts for removing recognitors from the juries and the assises, and from what time. Likewise of viscounts and other bailiffs of any kind who have amerced those who have been summoned to make inquests by the precept of our lord the king for defaults, when by the same summons there came a sufficient number to make inquests of this kind, and how much they have taken, and from whom they have taken it on the aforesaid occasion, and from what time. Likewise of viscounts who have handed over to extortionate bailiffs, oppressing the people above measure, hundreds, wappentakes, or tithings, at high rents, that so they may levy their own farms, and who those bailiffs were, and upon whom those damages were inflicted, and from what time. Likewise when the viscounts ought not to make their turns except twice in the year, who have made their turn oftener in the year, and from what time. Likewise whereas fines for redisseysines or purprestures

aut purpresturis factis per terram vel per aquam, pro occultatione thesauri, et aliis hujusmodi que ad dominum regem pertineant, et ad vicecomitem hujusmodi attachiare, qui ceperint fines hujusmodi, et a quibus et quantum et a quo tempore. Item qui potestate officii sui aliquos maliciose accionaverint et per hoc extorserint terras, redditus, aut alias prestationes, et a quo tempore. Qui receperint mandatum domini regis ut ejus debita solverent, et a creditoribus receperint aliquam portionem, ut eis residuum solverent, et nihilominus totum sibi allocari fecerint in scaccario vel alibi, et a quo tempore. Qui receperint debita regis vel partem debitorum, et debitores illos non acquietaverint, tam tempore domini regis H., quam tempore domini regis nunc. Item qui summonierit aliquos ut fierent milites, et pro respectu habendo ab eis lucra receperint, et quantum et quo tempore. Et si aliqui magnates vel alii sine precepto regis aliquos distrinxerint ad arma suscipienda, et quo tempore. Item si vicecomites aut ballivi aliqui cujuscunque libertatis non fecerint summoneri debito modo secundum formam brevis domini regis, aut aliter fraudulenter seu minus sufficienter executi fuerint precepta regia prece, precio, vel favore, et quo tempore. Item de hiis qui habuerint probatores imprisonatos, et fecerint eos appellare fideles et innocentes causa lucri, et quandoque eos impedierint, ne culpabiles appellarentur, et a quo tempore. Item qui habuerint felones imprisonatos, et eos pro pecunia abire et a prisone evadere permiserint liberos et impune, et qui pecuniam extorserint pro prisone dimittenda per plevinam, cum non sint replegiabiles, et a quo tempore. Item qui dona vel lucra aliqua receperint pro officiis suis exercendis, vel non exercendis vel exsequendis, vel ex-

made by land or water for the hiding of treasure and other such things as pertain to the lord the king, and to the viscount to attach such like, who have taken fines of this kind, and from whom, and how much, and from what time. Likewise who by the power of their office have proceeded maliciously against certain persons, and by this means have extorted lands, rents, or other payments, and from what time. Who have received the mandate of the lord the king to pay his debts, and have received from creditors some portion, that they might pay the rest to them, and nevertheless have caused the whole to be allowed to themselves in the exchequer or elsewhere, and from what time. Who have received the king's debts, or a part of them, and have not thereof acquitted those debtors, as well in the time of the lord king Henry, as in the time of the king who now is. Likewise who have summoned certain persons that they should be made knights, and have received bribes from them for favour shown to them, and how much and from what time. And if any magnates or others without the precept of the king have distrained any to take up arms, and from what time. Likewise if the viscounts or any bailiffs of any liberty whatsoever have not caused to be summoned in due manner according to the form of the writ of the lord the king, or otherwise have fraudulently or less sufficiently executed the royal precepts for entreaty, bribe, or favour, and from what time. Likewise of those who have had approvers in prison, and have made them accuse faithful and innocent persons for the sake of gain, and sometimes have hindered them so that the guilty were not accused, and from what time. Likewise who have had felons imprisoned, and have permitted them for money to go away and to escape from prison free and with impunity, and who have extorted money for letting out prisoners on bail, when they were not bailable, and from what time. Who have received gifts or bribes for exercising their offices, or for not exercising nor performing them,

seculus fuerit seu excesserit fines mandati regis aliter quam ad officium suum pertinuit, et a quo tempore. Et omnia ista inquirantur tam de vicecomitibus, coronatoribus, eorum clericis, ballivis quibuscunque, quam de dominis et ballivis libertatum quarumcunque. Item qui vicecomites vel custodes castrorum vel maneriorum domini regis quorumcunque, vel eciam qui visores hujusmodi operationum ubicunque, factarum per preceptum regis, magis computaverint in eisdem quam rationabiliter apposuerint, et super hoc falsas allocationes sibi fieri procuraverint. Et similiter qui petra, maremia, vel alia ad hujusmodi operationes empti seu provisa ad opus suum retinuerint seu amoverint, et quid et quantum dampnum dominus rex inde habuit, et quo tempore. De eschaetoribus et subeschaetoribus in seisinis domini regis facientibus vastum vel destructionem in boscis, parcis, vivariis, warennis infra custodias suas commissas per dominum regem, quantum et de quibus, et quo modo et a quo tempore. Item de eisdem, si occasione hujusmodi seisine ceperint bona defunctorum vel heredum in manum domini regis injuste, donec redimerentur ab eisdem, et quid et quantum ita ceperint pro hujusmodi redemptione, et quid ad opus suum proprium inde retinuerint, et a quo tempore. Item de eisdem, qui ceperint munera a quibuscunque pro officio suo exequendo vel non exequendo, quantum et a quibus, et a quo tempore. Item de eisdem qui minus sufficienter extenderint terras alicujus in favorem ejusdem vel alterius, cum custodia illarum terrarum dari, vendi, vel concedi debuerit in deceptionem domini regis, et ubi et quomodo, et si quid perinde ceperint, et quantum et a quo tempore.<sup>1</sup> Item de eisdem qui prece, precio, vel favore consenserint vel

<sup>1</sup> Thus far the Articles accord in substance with those in the Rot. Pat. 2 Edw. I., m. 5., already referred to, so that we are able to

identify the year in which they were first issued. The following articles are wanting in the Hundred Roll of that year.



or have executed them or exceeded the limits of the king's mandate otherwise than pertained to their office, and from what time. And let all these things be inquired into, as well concerning viscounts, coroners, and their clerks and bailiffs of any kind, as concerning lords and bailiffs of franchises of any kind. Likewise what viscounts or keepers of castles or manors of the lord the king, or also what overseers of works of this kind, any where carried on by the precept of the king, have computed more in the same than they could have reasonably applied, and have procured to be made to themselves false allowances. And in like manner, who have retained for their own use, or carried away, stone or timber or other things of the kind brought or provided for works of this kind, and what and how much loss the lord the king has suffered therefrom, and from what time. Of escheators and sub-escheators in the seysines of the lord the king, causing waste or destruction in woods, parks, vivaries, and warrens within the keeperships committed to them by the lord the king, how much, and from whom, and in what manner, and from what time. Likewise concerning the same, if on occasion of a seysine of this kind they have taken the goods of deceased persons or of their heirs into the hand of the lord the king unjustly, until they have been redeemed by the same, and what and how much they have taken for a redemption of this kind, and what they have retained for their own proper use therefrom, and from what time. Likewise concerning the same, who have taken gifts from any one for performing or not performing their office, how much, and from whom, and from what time. Likewise concerning the same, who have insufficiently extended the lands of any one in favour of the same or of another, when the custody of those lands ought to be given, sold, or granted, to the deceiving of the lord the king, and where and how, and if they have at the same time taken something, and how much, and from what time. Likewise concerning the same who for entreaty, reward, or favour have

consulerint custodias domini regis vendere pro minori quam vendi debuerant secundum verum valorem, vel maritagia hæredum tenentium de rege in capite, vel maritagia viduarum dominarum maritarum sine licencia domini regis, et quid propter hoc ceperunt et quantum, et quandocunque, et a quo tempore. Item de eisdem, qui procuraverint et consenserint quod iuratores inquisicionum factarum de etate heredum dicerent ipsos heredes fuisse plene etatis, cum non essent, unde dominus rex per hoc amittat maritagiū et custodiam hujusmodi heredum. Item de eisdem, qui reserverint ad opus suum proprium custodias vel maritagia per leve pretium, vel per concelamentum factum domino regi, et cujusmodi dampnum dominus rex inde percepit, et a quo tempore. Item cujusmodi terras seiserint et per quantum tempus eas in manu domini regis tenuerint. Item de terris captis in manu domini regis que capi non deberent, et postea restitutus per preceptum regis cum perceptis, utrum percepta restituerunt ad mandatum regis vel non.<sup>1</sup>

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<sup>1</sup> The text of the Articles delivered by the Justices Itinerant, which is printed in the first volume of the Statutes at Large published by the Record Commissioners in 1810, is a transcript of a version contained in the *Liber Custumarum* of the city of London, folio 136 b., which has not been printed in the

Rolls edition of the *Liber Custumarum*, but is referred to in vol. ii., p. 406, of that work. They are evidently of a later period of the reign of Edward I. than these articles, as they direct the justices to take cognisance of all the aforesaid matters done or committed within twenty-five years last past.

consented<sup>1</sup> or counselled to sell the wardships of the lord the king for less than they ought to be sold according to their true value, or the marriages of widow ladies, married without the license of the lord the king, and what they have taken on this account, and how much, and when and from what time. Likewise concerning the same, who have procured and consented, that jurors of inquests made concerning the age of heirs should say that the heirs themselves were of full age, when they were not so, whereby the lord the king would lose the marriage and the custody of heirs of this kind. Likewise concerning those, who have reserved for their own use wardships or marriages for a low price, or by concealment made against the lord the king, and what sort of damage the lord the king has suffered therefrom, and from what time. Likewise what sort of lands they have seysed, and during what length of time they have kept them in the hand of the lord the king. Likewise concerning the lands taken into the hand of the lord the king, which ought not to have been so taken, and have afterwards been restored by the king's precept, with the fruits thereof, whether they have restored the fruits at the mandate of the lord the king.<sup>2</sup>

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<sup>1</sup> These six additional articles are also found inserted in MSS. Harleian 667, 1033, 1120.

<sup>2</sup> The text of a later series of Articles of Inquiry, which were delivered by the Justices Itinerant to each ward of the city of London in 14 Edward II., being articles which excited great resistance and

which were administered at a visitation held after an interval of 44 years, is now readily accessible in vol. ii. part 1 of the "*Liber Custumaram*," which forms part of the "*Monumenta Gildhallæ Londoniensis*," edited by Mr. Henry Thomas Riley in 1860 amongst the Rolls Series.

## APPENDIX II.

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ITEM CAPITULA TANGENTIA PRIMA STATUTA WESTM. IN  
ANNO REGNI REGIS EDWARDI FILII REGIS HENRICI  
TERCIO. MS. Rawl. C. 160, fol. 64, col. 2.<sup>1</sup>

Imprimis. § De magnatibus et aliis venientibus hospitandis ad domos religiosorum, cum non essent requisiti per gubernatores earundem, ad custum eorundem religiosorum vel ad custum proprium contra voluntatem eorundem religiosorum, et si qui occasione cujuscunque affinitatis vel alia ratione quacunque fugaverint in parcis vel piscati fuerint, in vivariis aliorum, vel ingressi fuerint maneria prelatorum religiosorum vel aliorum ad comedendum vel pernoctandum sine voluntate et licentia dominorum vel ballivorum eorundem maneriorum, ad custum eorundem dominorum vel ad custum proprium, et similiter de hiis qui serruras, fenestras, et hostia vel consimilia fregerint vel aperuerint, vel victualia vel alia bona inventa in eisdem maneriis ceperint, sub colore emptionis vel aliter. De hiis qui triturrari vel capi fecerunt blada, victualia, vel alia bona prelatorum religiosorum vel aliorum sub colore emptionis vel aliter contra voluntatem eorum quorum ipsa fuerunt, et si de voluntate de hiis qui non satisfecerunt de conventionione inter ipsos facta.

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<sup>1</sup> The title prefixed to these Articles in MS. Rawl. C. 160 is probably unique. In Tottell's copy the corresponding articles are printed as a continuation of the preceding articles without any distinction. In the Liber Custumarum of the city

of London, they are headed, "In-  
cipiunt Capitula nova de eisdem  
placitis, tempore Regis Edwardi  
facta." In several MSS. the  
corresponding articles are simply  
distinguished by the title of "Novi  
Articuli."

## APPENDIX II.

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### LIKEWISE ARTICLES TOUCHING THE FIRST STATUTES OF WESTMINSTER IN THE THIRD YEAR OF THE REIGN OF EDWARD THE SON OF KING HENRY.

In the first place. § Concerning the magnates and others coming to be lodged in the houses of religious persons, when they have not been invited by the governors thereof, at the cost of the said religious persons or at their own cost, against the will of the said religious persons, and if any by occasion of any affinity or for any other reason have chased in the parks or fished in the ponds of others, or have entered the manors of religious prelates or of others to eat or to pass the night, without the consent or license of the lords or the bailiffs of the said manors, at the cost of the said lords or at their own cost; and in like manner, concerning those, who have broken or opened locks or windows and doors, or the like, or have taken victuals or other goods found in the same manors, under colour of purchase or otherwise. Concerning those, who have caused to be thrashed or taken away corn, victuals, or other goods of religious prelates, or of others, under colour of purchase or otherwise, against the will of those to whom they belonged, and if with their consent, concerning such persons who have not satisfied the agreement made between them.

Item de hiis qui vindictam fecerint quibuscunque qui escas vel hospitia eis negarunt; et similiter de hiis qui vindictam fecerint eo, quod aliqui super predictis gravaminibus in curia domini regis conquesti fuerint. Item de hiis qui miserunt ad domos vel maneria religiosorum vel aliorum homines, equos, vel canes, perhendinantes ad custum alienum. Item de vicecomitibus coronatoribus hospitantibus in ballivis suis cum pluribus quam quinque vel sex equis, vel qui per frequentes adventus ultra modum quoscunque oneraverint. Item de hiis qui levaverint eschampium latronum vel felonum, antequam judicati fuerint per justiciarios itinerantes. Item de hiis qui sub colore de wrecco maris bona quorumcunque sibi appropriaverint, cum ea dici wrecum non debeant nec ad ipsos pertineant. Item de hiis qui amerciati fuerint sine rationabili occasione, et non secundum quantitatem delicti, et non per pares suos, et per quem amerciati fuerint. Item de prisis constabulariorum factis de bonis aliorum, quam eorum qui sunt de villis ubi castra sita sunt, et si de bonis eorum qui sunt de eisdem villis, et non satisfactum fuerit infra xl. dies, exceptis antiquis prisis debitis et consuetis, per quem hujusmodi prise facte fuerint et quando. Item de hiis qui ad mandatum vicecomitis et aliorum ballivorum domini regis, vel ad clamorem patrie, sequi vel arrestari non fecerint felones, conversantes tam infra libertates quam extra. Item de vicecomitibus, coronatoribus et aliis ballivis qui prece, precio, vel favore vel quacunque affinitate conclaverint vel conclari procuraverint felonias factas in ballivis suis, vel qui se subtraxerint ad hujusmodi malefactores capiendos. Si quis rapuerit domicillas infra etatem existentes sponte vel invite, seu et alias muli-

Likewise of those who have taken revenge on any persons who have denied to them food or lodging; and likewise concerning those who have taken revenge on the ground, that some have complained about the aforesaid grievances in the court of the lord the king. Likewise concerning those who have sent to the houses or manors of religious or other persons men, horses, or dogs abiding there at other people's cost. Likewise concerning viscounts coroners claiming to be lodged in their bailiwicks with more than five or six horses, or who by frequent visits beyond moderation burden any persons whatsoever. Likewise concerning those who have levied compensation upon robbers or felons before they have been adjudged by the justices itinerant. Likewise concerning those who, under colour of wreck of the sea, have appropriated to themselves the goods of any persons, when the same ought not to be called wreck, nor did they belong to them. Likewise concerning those who have been amerced without reasonable occasion, and not according to the quantity of the offence, and not by their peers, and by whom they have been amerced. Likewise concerning the prises of the constables made of the goods of others than those, who are of the vills where the castles are situated, and if of the goods of those who are of the said vills, and satisfaction has not been made within forty days, excepting the ancient prises due and accustomed, by whom these prises have been taken, and when. Likewise concerning those who at the mandate of the viscount or of others, bailiffs of the lord the king, or at the cry of the country, have not caused felons to be pursued and arrested, abiding as well within liberties as without. Likewise concerning viscounts, coroners, or other bailiffs, who for entreaty, bribe, or favour, or any affinity whatever, have concealed or procured to be concealed felonies committed in their bailiwicks, or have withheld from capturing such malefactors. If any one has ravished damsels below age, whether with or against their will,

eres plene etatis existentes contra voluntatem earum. Item de vicecomitibus et aliis ballivis qui replegiaverint felones prisiones, cum non essent replegiabiles, et similiter de hiis qui prisiones replegiari recusaverint qui replegiabiles fuerint, et si que receperint pro predictis replegiacionibus, quid, et quantum, et a quibus. Item de hiis qui ceperunt averia aliorum vel capi fecerint in uno comitatu et ea fugaverint extra comitatum illum, et similiter de hiis qui ceperint averia vel districtiones extra feodum suum. Item de hiis qui fugaverint averia ad castra vel forcelletta, et ea ibi detinuerint contra vadium et plegium, cum per vicecomitem et ballivos petita fuerit eorum deliberatio. De vicecomiti et aliis ballivis, qui receperint debita regis Henrici vel domini regis nunc de summonicione scaccarii, et debitores inde non acquietaverint, et de eorum heredibus qui modo sunt superstites, et quantum receperint et a quibus. Item de malefactoribus in parcis et vivariis, et etiam de hiis qui veniendo, morando, et redeundo quamcunque roberiam fecerint, et de aliis rebus quibuscunque. Item de hiis qui fecerint districciones in civitatibus, burgis, nundinis vel mercatis super homines forinsecos de regno isto pro debitis alicujus, nisi sint debitores vel plegii. Item de ministris domini regis, qui per se vel per alios aliquas loquelas vel negocia in curia domini regis existentia foverint de terris et tenementis vel aliis rebus, ut habeant inde partem vel aliquod profectuum per convencionem inde inter eos factam, et similiter de vicecomiti et aliis ministris domini regis capientibus munera pro officiis suis exercendis. Item de clericis justiciariorum, eschaetorum, vel inquisitorum, ca-



or other women of full age against their will. Likewise concerning viscounts and other bailiffs, who have let out on bail felon prisoners, when they were not bailable; and in like manner of those who have refused to let out on bail persons who were bailable, and if they have received anything for the aforesaid bailing, what, and how much, and from whom. Likewise concerning those who have taken or caused to be taken the cattle of others in one county, and have chased them out of that county, and in like manner concerning those who have taken cattle or made distrains beyond their fee. Likewise concerning those who have chased cattle to castles or fortresses, and have detained them there against sureties and pledges, when their delivery has been claimed by the viscounts and the bailiffs. Concerning the viscounts and other bailiffs who have received the debts of king Henry, or of the lord the king who now is, upon the summons of the exchequer, and have not acquitted the debtors thereof, and concerning their heirs who are now surviving, and how much they have received, and from whom. Likewise concerning malefactors in parks and stews, and likewise concerning those who in coming, tarrying, and returning, have committed any robbery, and concerning other things whatsoever. Likewise concerning those who have made distrains in cities, boroughs, fairs or markets, upon men strangers of this realm for the debts of any one, unless they are debtors or sureties. Likewise concerning the officers of the lord the king, who through themselves or through others have maintained any pleas or business existing in the court of the lord the king concerning lands or tenements or other things, that they may have thence a part, or some profit, by agreement thereon made between them, and in like manner concerning the viscount and other officers of the lord the king taking gifts for exercising their offices. Likewise concerning the clerks of the justices, escheators,

pientibus denarios pro capitulis deliberandis nisi fuerint clerici justiciariorum in itinere. Et de illis, si plus ceperint quam ii. s. de hundredo vel wappentagio, quod respondeat per xii. vel per sex. Item de hiis qui capiunt superflua vel indebita theolonia in civitatibus, burgis, vel alibi, contra communem usum regni. De civibus et burgensibus capientibus muragia sibi per dominum regem concessa aliter, quam facere deberent secundum concessionem a domino rege inde factam. Item de hiis qui ceperint plures equos vel carectas ad cariaga regis facienda aliter quam necesse fuerit, et que munera receperint pro eisdem remittendis, quid, et quantum et a quibus. Item de magnatibus et eorum ballivis, et similiter de aliis, exceptis ministris regis, quibus specialis ad hoc datur auctoritas, qui ad instantiam cujuscumque vel auctoritate propria attachaverunt quoscumque vel eorum bona transeuncia per eorum potestates, compellendo per hoc ipsos ad respondendum coram eis de contractibus, convencionibus, et transgressionibus extra posse et jurisdictionem suam facta, cum nichil teneant de ipsis, nec infra libertates suas. De vicecomite et aliis ballivis, qui non permiserint pascere quoscumque de suo proprio averia sua capta et imparcata, et quid receperint pro custodia eorumdem, cum illi, quorum averia fuerint, hoc facere fuerint parati, et hoc intelligendum est post captionem post predictum parleamentum. De districcionibus factis, postquam rex inhibuit in dicto parleamento, per animalia ad wannagium terrarum deputata, vel etiam per bidentes, pro debito domini regis vel aliorum seu alia quacunque occasione, vel per quemcumque, cum alia sufficiens districcio inventa fuerit. Et similiter de superfluis districcionibus factis tam post parleamen-

or inquisitors taking money for delivering the articles, unless they be the clerks of the justices itinerant. And concerning those who have taken more than two shillings from the hundred or wappentake, that it may answer by xii. or by six. Likewise concerning those who take superfluous or undue tolls in cities, boroughs, or elsewhere, against the common use of the realm. Concerning citizens and burgesses taking murages granted to them by the lord the king, otherwise than they ought to do according to the grant made thereof by the lord the king. Likewise concerning those who have taken more horses and carts to make carriage for the king otherwise than was necessary, and who have received gifts for remitting them, what and how much, and from whom. Likewise concerning magnates and their bailiffs, and in like manner concerning others, excepting officers of the king, to whom there is given special authority for this purpose, who at the instance of any person whatever, or of their own authority, have attached any persons whatever or their goods passing through their jurisdictions, compelling them by this means to answer before them concerning contracts, agreements, and trespasses made beyond their power and jurisdiction, when they hold nothing of them, nor within their franchises. Concerning the viscount and other bailiffs, who have not permitted any one to feed with their own food their own cattle taken and impounded, and what they have received for the keeping of them, when they, whose cattle they were, have been ready to do this, and this is to be understood after the taking of them since the aforesaid parliament. Concerning distrains made, after the king has prohibited them in the said parliament, upon animals employed for the waynage of the lands, or even upon sheep, for a debt due to the lord the king or to others, or on any other occasion, or by any person whatever, when another sufficient distrain has been found. And in like manner concerning superfluous distrains made as well after as

tum quam ante. Item de averiis captis pro debito domini regis vel alia occasione quacumque venditis infra xv. dies post captionem post predictum parlementum. Item de hiis qui capiunt mercedem ab aliquibus pro advocaria habenda, cum non sint eorum tenentes, nec residentes in tenuris eorum. De hiis qui alienant terras et tenementa in fraudem vel alio modo contra adventum justiciariorum, ne ponerentur in assisis juratis, qui fuerint illi et per quorum procurationem talia facta fuerint, et a quo tempore. Et hec omnia que contingunt predicta statuta distincte et aperte inquirantur, ita quod cuilibet conquerenti fiat justitia, et pene in eisdem statutis contente cuilibet offendenti adjudicetur, sive ad sectam regis sive aliorum, secundum quod in eisdem statutis continetur. Pene autem in predictis statutis contente adjudicande sunt factis post festum Sancti Michaelis, anno regni regis Edwardi secundo, et non ante, tamen de transgressione et offensione prius facta talis adjudicetur pena, qualis ante predicta statuta in casibus consimilibus adjudicari consueverit.

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before the parliament. Likewise concerning cattle taken for a debt due to the lord the king, or on any other occasion, sold within fifteen days after the taking of them, since the aforesaid parliament. Likewise concerning those who take reward from any persons for having their advowry, when they are not their tenants nor are resident in their tenures. Concerning those who alienate lands and tenements through fraud, or in any other way, against the visit of the justices, lest they should be put on the sworn assises, who they were and through whose procurement such acts were done, and from what time. And let all these things, which concern the aforesaid statutes, be distinctly and openly inquired into, so that justice may be done to every complainant, and the penalties contained in the said statutes be adjudged to each person offending, at the suit either of the king or of others, according to what is contained in the said statutes. But the penalties contained in the aforesaid statutes are to be adjudged upon acts done after the feast of St. Michael, in the second year of the reign of king Edward, and not before, nevertheless concerning trespasses and offences committed before that time, let such a penalty be adjudged, as has been accustomed to be adjudged in similar cases before the aforesaid statutes.

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## APPENDIX III.

Placita apud Westm̃ corā Dño Rege in Oct̃ S̃ci Michis  
añ regñ ejus xvij<sup>o</sup>.

Die Jovis p̃xima post festū S̃ci Dioñis añ reg̃ Henr̃  
fit reg̃ J. xvij<sup>o</sup> corā dño rege ⁊ subs̃ptis Provisum  
fuit ⁊ concessū a dño rege ⁊ a subs̃ptis om̃ibz ⁊ aliis  
qđ dece<sup>o</sup> cū talis bastardia obiciat̃ alicui in cuī dñi  
reg̃ qđ nat<sup>o</sup> fuit añ m̃rioniū cont̃ctū inl̃ p̃rem suū ⁊  
m̃rem suam mittat̃ loq̃ta ad ep̃um loci ad inquirendū  
ut̃ tal̃ nat<sup>o</sup> fuit añ p̃decum mat̃moniū ṽl post. Ita qđ  
in inquisicōe illa cesset om̃is appella<sup>o</sup> sicut in sim-  
plici bastardia de qua placitū trāsmissū erit ad cuī  
xianitatis. Ita qđ nulla app̃la iñ fiat ex<sup>a</sup> regnū.  
Et iō dece<sup>o</sup> ita teneat̃ tā de illis de quibz judiciū est  
faciendū in cuī dñi reg̃ q<sup>a</sup> de placitis q̃ nōdum incipiunt̃  
cū talis bastardia obiciat̃.

E. Cañ archieps.

R. Cicest̃r dñi reg̃ cancell.

R. Dunelm̃ ep̃s.

Ep̃s Elieñs.

Ep̃s Norwič.

Ep̃s Lond̃.

### APPENDIX III.

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Pleas before the Lord the King at Westminster in the Octaves of St. Michael in the eighteenth year of his reign.

On Thursday next following the festival of Saint Denis in the eighteenth year of king Henry, the son of John, before the lord the king and the undersigned. It was provided and granted by the lord the king and by all the undersigned and others, that in future when such kind of bastardy is objected to any one in the court of the lord the king that he was born before matrimony was contracted between his father and his mother, an imparlance should be sent to the bishop of the place to make an inquisition whether he was born before the aforesaid matrimony or after it. So that upon that inquisition all appeal shall cease as in simple bastardy, concerning which a plea shall have been transmitted to the court of christianity. So that no appeal shall be made thereon out of the kingdom. And accordingly for the future let it be so held as well concerning those pleas concerning which judgment has to be made in the court of the lord the king, as concerning other pleas, which are not yet begun, when such kind of bastardy is objected.

Edmund, Archbishop of Canterbury.

Ralph of Chichester, chancellor of the lord the king.

Richard, Bishop of Durham.

The Bishop of Ely.

The Bishop of Norwich.

The Bishop of London.

Eps Bathoñ.

Eps Exoñ.

Eps Karl.

Eps Heref.

Eps Roff.

Comites :

R. coñ Cornuþ i Picť.

G. coñ marescať.

J. coñ Linč.

W. coñ Warenñ.

J. comes Cestr.

W. coñ de Ferraf.

Th. coñ de Warrewič.

H. coñ Kanč.

H. de Ver coñ Oxoñ.

H. coñ Hereford.

Sym de Monteforti.

Rađ de Thony.

Philipp<sup>o</sup> de Albinaco.

Rađ fiť Nichi.

Herb fiť Mathi.

Joh Marescať.

Galfr de Lucy.

Rič de Argenteinn.

Huđ Dispensator.

Witt de Say.

Witt Bardof.

Witt de Cantiluř senior.

Witt de Cantiluř junior.

Rič Syward.

Godefr de Crawecūb.

Almaric<sup>o</sup> de Sčō Amando.

Bertam de Kuriol.



The Bishop of Bath.  
 The Bishop of Exeter.  
 The Bishop of Carlisle.  
 The Bishop of Hereford.  
 The Bishop of Rochester.

Earls :

Richard, Earl of Cornwall and of Poictou.  
 Gilbert, Earl Marshall.  
 John, Earl of Lincoln.  
 William, Earl of Warrene.  
 John, Earl of Chester.  
 William, Earl of Ferrars.  
 Thomas, Earl of Warwick.  
 Hubert, Earl of Kent.  
 Hugh de Ver, Earl of Oxford.  
 Humphrey, Earl of Hereford.  
 Symon de Monteforte.<sup>1</sup>  
 Ralph de Thony.  
 Philip de Albini.  
 Ralph Fitz Michael.  
 Herbert Fitz Matthew.  
 John Marshall.  
 Godfrey de Lucy.  
 Richard de Argentein.  
 Hugh Dispenser.  
 William de Say.  
 William Bardolf.  
 William de Cantelupe, senior.  
 William de Cantelupe, junior.  
 Richard Syward.  
 Godfrey de Crawecumbe.  
 Almaric de St. Amand.  
 Bertram de Kuriol.

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<sup>1</sup> Symon de Montefort had been confirmed in the title of Earl of Leicester in 1230. The other names, | commencing with Ralph de Thony, | are the names of Barons.

Engelard de Cygoingny.  
Rob de Muchegros.  
Bald de Pauntoñ.  
Herb de Lucy.  
Rič fił Huğ.

## NOTE.

The above record is contained in the Tower Series of the Plea Rolls (*Placita coram Rege*), which have been recently transferred to the Public Record Office, and have not as yet been printed. By a singular error Selden treats it as a record of the proceedings of a Parliament held at Tewkesbury in 18 H. III., and Sir William Blackstone, on the authority of Selden, has founded an argument on this record, as if the bishops had attempted in a Parliament held at Tewkesbury in 18 H. III. to alter the law of England on the subject of special bastardy, as was attempted in the so-called Parliament held at Merton in 20 H. III. The editor has thought it desirable to print the record in full with its heading, as entered in the Plea Roll of 18 H. III. dors. n. 15, as it has an important historical bearing on a great controversy, and is probably the record of the identical plea heard before the king, to which reference is made in the text of Bracton, fol. 96, in immediate connection with the provisions of Merton. See the Introduction, and the text of the present volume, p. 83.

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Engelard de Cygoingny.  
Robert de Muchegros.  
Baldwin de Paunton.  
Herbert de Lucy.  
Richard Fitz Hugh.

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# INDEX.

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# INDEX.

## A.

### Abjuration of the realm :

- how limited, 393.
- the oath of, 395.

### Abortion:

- when it amounts to homicide, 279.
- by violent means, punished by death or exile, 465.

### Acceptilation releases an obligation, 123.

### Accessories, liable to be outlawed, as well as the principals, 333.

### Accessory not triable until the principal party is convicted, 335.

### Action :

- definition of, 103.
- Azo's illustration, 106.
- arises out of a contract or a tort, 107.
- division into real, personal, and mixed, 127.
- criminal and civil, 129.
- civil, may not be brought in a criminal form, *ib.*
- if instituted civilly, cannot be changed into a criminal action, 131.
- personal, may be brought against the heir when not penal, *ib.*
- how called native, *ib.*
- sometimes double, when the suit is for a thing, and for a penalty, 133.
- sometimes bifurcated, *ib.*
- real, for an immoveable, *ib.*
- real, for a moveable, 135.
- value to be stated, *ib.*
- releasable by an equivalent, 137.

### Action—*cont.*

- mixed, for a thing and against a person, 137.
- also, when in prosecution of a thing, and of a penalty, *ib.*
- sometimes perpetual, 139.
- preambulary, *ib.*

### Actions :

- transitory, which pass to heirs, *ib.*
- prejudicial, 139, 149.
- about prædial rights, 141.
- under the Aquilian law, 143, 145.
- unde vi, 145.
- quorum bonorum, 145, 147.
- who are entitled to, for a tort, 145.
- for an injury, *ib.*
- because of alarm, *ib.*
- on account of deceit, *ib.*
- for violent dispossession, *ib.*
- quod vi aut clam, 147.
- for stoppage of right of way, *ib.*

### Action :

- "quorum bonorum," *ib.*
- the choice of one excludes recourse to another, 149.
- once extinguished, never revives, *ib.*

### Actions :

- criminal, cognisable in the court of the king, 151.
- civil, when transferable from the court of the lord to the court of the county, 159.
- when to the king's court, *ib.*

### Action:

- not allowed in a case of freehold, except upon a writ from the king, 207.
- civil, whilst pending against one party, cannot be brought against other parties, 213.

**Actions:**

civil, an order must be observed, if the complainant is entitled to bring several, 213.

civil, against a person and against his property may proceed at the same time, *ib.*

order of ascent, not of descent, allowable, 215, 219.

civil, order of propounding them, 221. prejudicial, 223.

ought to be restrained where one will suffice, 231.

**Action:**

several actions to be determined by a single action, if possible, *ib.*

indirect, by a lord for damage, by reason of an assault against his serfs, 233.

**Actions:**

for personal injuries, may be brought by a master on behalf of his servants or his serfs, 547.

abettors liable to, 549.

for personal injuries, must be promptly instituted, *ib.*

for personal injuries, 545.

may be brought by a husband in defence of his wife, but not conversely, 547.

damages taxable by the judge, *ib.*

Adelstane, king, law of, as to rape of women, 485.

Advowson, how assignable as dower, 91.

**Advowsons:**

pleas about, determinable in the court of the king, 163.

of the lord the king, 245.

Age, full, different in military and in socage tenure, 4, 9.

Agents can bind by stipulations, 121.

**Amercements:**

scale of, according to the measure of the delict, 243.

of counts and barons to be settled through their peers, by the barons of the Exchequer, *ib.*

Anglia conquestus, 34.

Anglians, the law of the, as to rape of women, 485.

Animals, stray, without an owner, belong to the king, 271.

Appeal, formalities to be observed when it is made in the presence of the viscount and the coroners, 427.

**Approver:**

may be pardoned by the king, 521.

must do battle in certain cases, 525.

how he ought to maintain his accusation, 527.

exceptions against an, allowed to the defendant, 531.

faith to be kept with, 533.

must abjure the realm under any circumstances, *ib.*

his accusation can only be entertained in a court of the king, 535.

Archbishops summoned before the justices itinerant, 189, 305.

Armour-bearers, 307.

Arms, wood and stone not comprised under the term, 473.

**Arson:**

crime of, 153.

punishment of, 479.

**Articles:**

of the barons presented to king John, 345.

of the justices itinerant, temp. H. 3, 240.

of the justices itinerant after Statute of Westminster the First, 3 Edw. 1, 252.

Asia, conditional arrival of a ship from, 115.

**Assise:**

of novel disseysine, equivalent to an action "unde vi," 143.

of the death of an ancestor, equivalent to an action "quorum bonorum," *ib.*

Aula regia, the special court of the king himself, 160.

**Azo:**

his criticism of unlearned judges, 180. variation from, 105.



B.

Bacberende, a thief detected with the stolen articles on his back, 293, 510, 541.  
 Banco:  
     *justitiarum* in, 160, 182.  
     *justitiarum* de, 186, 189, 191.  
 Bane, la, from the Saxon *bana*, a murderer, 236.  
 Barabas liberated, 455.  
 Barber, the case of the, copied from the Digest, 399.  
 Baron, court of the, its jurisdiction in civil actions, 159.  
 Barons, of Hastings, 253.  
 Barony, plea for a, determinable in the court of the king, 163.  
 Battle on a plea of land, promised to be discussed, but omitted, 438.  
 Beauvais, money of, 487.  
 Belvacensis, Moneta, 486.  
 Bench:  
     justices resident at the, 181, 183.  
     at Westminster, 187, 201.  
 Benignant interpretation of a deed permissible in a case of dower, 75.  
 Bishop:  
     mandate to a, to admit a clerk, 163.  
     summoned before the justices itinerant, 189, 305.  
     the, his prison for the clergy, 299.  
     if remitted as an outlaw to the ordinary, may be degraded, 385.  
 Blunders, John, case of, an assise of the death of ancestor in the county of Middlesex, 79.  
 Bona vacantia go to the Crown, 139.  
 Borghye aeldere, a principal surety in frankpledge, 306.  
 Borough, twelve loyal burghers of each, summoned to attend on the justices itinerant, 189.  
 Brodegh, Robert, case of, in the county of Berks, 405.  
 Bruises, not wounds, 463.  
 Bullion in ingots, 427.

Burdeth, Idonea, wife of Nicolas, 55.  
 Burgh, Adam de, case of, in the county of Kent, 9 & 10 H. 3, 407.  
 Burglar may be slain, where there is peril of life, 464.  
 Burning alive:  
     a punishment for greater crimes, 155.  
     criminals, who are to be burnt alive, ought not to be tortured beforehand, *ib.*  
 Busones of the county, 237.

C.

Camerarii, part of each household, 306.  
 Cantilupe, Hugh de, his duel, 9 H. 3, in the county of Essex, 447.  
 Canute, king of the Danes, 385.  
 Capacity, the test of majority in socage tenure in the case of a woman, 5.  
 Castration:  
     punished by death or exile, as an offence, 463.  
     adjudged to be mayhem, 469.  
 Cattle:  
     distrainted and driven out of the county, 561.  
     unjust seizure and detention, a kind of robbery against the peace of the king, 563.  
     seized for services due and not performed, 565.  
     seized for trespass, 567.  
     impounded according to law and custom for doing damage, 569.  
 Cattle-lifter, 156.  
 Cerevisia, purchase of, 239.  
 Cervisia, sold by bailiffs, 250.  
 Chains, not to be put on to prisoners, 155.  
 Champion, if a hireling, how punishable, 516.  
 Charter of liberties, 283.  
 Chirograph, in the court of the king, 93.

Christiana, wife of Walter, case of dower,  
14 H. 3, in the county of North-  
ampton, 59.

Christian not to be put to death for a petty  
larceny, 517.

**Christianity:**

the court of, has cognisance of the  
crimes of clergy, 291.

when clergy are delivered up for the  
death of a man, 299.

should not protect a felon-clerk, who  
has escaped out of prison, 357.

Chronicles, book of, quoted, 167.

**Church:**

Holy, 485.

presentation to a, by a layman, 75.

Cinque Ports, franchise of the, 257.

Circumcision, lawful in the case of the  
Jews, 465.

Citizenship, loss of, 153.

Civil action may be changed into a crimi-  
nal suit, 433.

Chattels of a person accused and acquitted  
of a misdemeanor to be released,  
539.

Clarendon, assise of, A.D. 1166, as to ab-  
juration of the realm, 397.

**Clerk:**

apostacy of a, punished by burning by  
a lay hand, 301.

accused of homicide, how to be pro-  
ceeded against, 299.

outlawed, liable to degradation, if he  
cannot purge himself, 385.

amerciable by the king according to  
his lay fee, and not according to  
his ecclesiastical benefice, 243.

Clergy not degradable by the king, 299.

**Cloth:**

assise of its width, 243.

its measurement by ells, 427.

**Code of Justinian cited:**

De repetundis, 168.

De hæredibus, 224.

De tributoria actione, 228.

De injuriis, 227.

De iis, qui latrones, 338.

Cokkeslege, land of, 23.

**Commodatum:**

different from mutuum, 109.

must be gratuitous, 111.

Common fame, persons indicted upon,  
437.

Concubina, legitima, 483.

Concubine not privileged to refuse evi-  
dence, 521.

Condictio indebiti, 120.

**Coin:**

falsifiers and clippers of, 245, 247.

clipping of the, a kind of high treason,  
267.

Cone and keye, the test of a woman's  
capacity in certain boroughs, 5, 9.

Confusion of one mass with another may  
extinguish an obligation, 125.

Conspiracies, punishable, 157.

Conspiracy harmless, if no act follows,  
337.

Constitution, an ancient, that a person  
cannot gainsay the death, if he is  
found on the body, 407.

Consuetudo, Angliæ, 344, 346.

Contracts, of good faith, not in writing, 119.

Conventions, nude, do not give rise to an  
action, 106.

Coqui, part of a household, 306.

Coronation oath of the king, 171.

**Coroner:**

his office in cases of homicide, 281.

his duty to summon an inquest on the  
body, 283.

on persons drowned, 285.

in cases of treasure trove, 287.

where there has been a rape of virgins,  
289.

**Coroners:**

in a case of homicide may summon  
from six neighbouring townships,  
281.

the roll of, superior to that of the vis-  
count, 431.

**Council:**

Common, of the realm, 45.

the Lateran, of 1215, in which com-  
plaints were made against Simon  
de Montfort, 301.

Council—*cont.*  
 of Oxford, 301.

Counts :  
 summoned before the judges itinerant,  
 189, 305.  
 palatine, 291.

County court :  
 its jurisdiction in civil actions, 159.  
 over pleas of forbidden distress, *ib.*  
 record made under a writ from the  
 king, 535.  
 in what cases it has a record, 557.

Court :  
 a lord's court, amerciable for a false  
 judgment, 565.  
 the record of such a court may be  
 impugned, 568.

Couthutlaghe, a harbourer of outlaws, 337.

Crime :  
 founded on noxious intention, 127.  
 trial for major precedes trial for minor  
 211.

Criminal suit :  
 cannot be changed into a civil action,  
 433.  
 cannot be renewed, if once retracted,  
 and the accused party is acquitted,  
 437.  
 falls to the ground, if the appellor is  
 a manifest traitor, *ib.*

Criminal fugitive allowed five months to  
 appear before outlawry, 309.

Crown :  
 entitled to bona vacantia, 139.  
 detention of a thing distrained per-  
 tains to the, 543.

Curia magna of the king, 158.

Customs :  
 as to fugitives of the county of Here-  
 ford, 339.  
 of the county of Gloucester, *ib.*  
 of England as to felons' lands, 345,  
 347.  
 as to outlawry, 373.  
 new, not leviable without the licence of  
 the king, 247.

## D.

Dace, Emma, wife of William, case of  
 dower on lands acquired after mar-  
 riage, 7 H. 3, 57.

Dapifori, part of a household, 304.

Deacon, apostate in marrying a Jewess,  
 burnt at the Council of Oxford,  
 301.

Deaf man may stipulate and promise,  
 117.

Death, punishment of, inflicted by cudgels,  
 155.

Decenna, equivalent to frankpledge, 312,  
 313.

Decretum of Gratian, illustrious persons  
 may proceed by proxy for libel,  
 227.

Degradation of a clerk, the forfeiture of  
 his civil rights, 301.

Delict, the obligation resulting from it, as  
 regards the punishment, dissolved  
 by the death of either party, 127.

Deuteronomy, book of, quoted, 165, 167.

Deodand :  
 not in the case of a ship, where a  
 person is drowned at sea, 389.  
 for the king, on persons drowned in  
 fresh water, not in the sea, 287.

Deposit, entails responsibility on the  
 ground of *dolus*, but not on the  
 ground of *culpa*, 111.

Dies, dominica, 246, 254.

Digest of Justinian cited :  
 De vi publica, 217.  
 Quod metûs causa, 223.  
 Quorum legatorum, 225.  
 De tributoria, *ib.*  
 Locati, *ib.*  
 De privatis delictis, 227.  
 De actionibus et obligationibus, *ib.*  
 De publicanis, *ib.*  
 De sicariis, 338.  
 De requirendis reis, 340.  
 De pœnis, 521.

Digest, torture forbidden in the case of a pregnant woman, 521.

Dignity, a substitute for frankpledge, 307.

Diligence:

due, in the case of goods lent to be returned, 109.

in the case of goods pledged, 111.

Disseisor may request the association of another justice, 210.

Distress:

plea of refusal, may be entertained by the viscount from necessity, as justiciary of the king, 549.

seizure of cattle for distress of services, 551.

when services are not acknowledged, 553.

when it may lead to battle or a great assise, 555.

unjust detention of cattle taken in, *ib.*

Divorce:

between husband and wife, as distinguished from a separation of bed, 52.

fatal to dower, 50.

Donation:

by the husband on account of marriage, 49.

when made at the door of the church, 53.

is properly dower according to the custom of England, *ib.*

of a church, distinct from that of the advowson, 93.

Dos:

adventitia, 50.

profectitia, *ib.*

when identical with a marriage, 51.

parapherna, 53.

Dovecotes, under the cognizance of the justices itinerant, 247.

Dower:

a donation by the husband to his spouse at the door of the church, 49, 53.

nature of reasonable, 49.

Dower—*cont.*

the third part of the husband's lands, 49.

can be appointed by a minor at the door of the church, 51.

not valid on death bed, *ib.*

what is properly so according to the custom of England, 53.

reverts to husband in case of divorce, 5 H. 3, *ib.*

in the county of Cambridge, 57.

in the case of a barony not appointable on the capital manor, 59.

in the case of a vavassory, not restricted as in a barony, 61.

restricted in the case of an earldom, whether there is a castle or not, *ib.*

in Ireland, in the case of Walter Earl Marshall, 63.

may be appointed in money, 65.

in things by weight and measure, 67. claimed by two wives, how determined, *ib.*

may be by parole at the door of the church, 75.

does not extend to parks of live animals, 97.

not liable for debts of the husband, 99.

pleas of, terminable in the court of the king, 163.

divers customs of cities and counties as to, 53.

may be less than the third part, if the woman is content, 57.

appointed in gavelkind, *ib.*

by oral parole before espousals elsewhere than at the door of the church, 73.

wife may claim more than her dower under a testament or an approved custom, 67.

a written instrument of, 75.

of a second wife, 77.

appointable to the wife of a son, notwithstanding the father's wife is alive and has an appointment of dower, 79.

**Dower—cont.**

of the widow is warrantable by the heir in his own court, not in the widow's, 99.

Dover, bailiffs of, writ to, 287.

**Duel:**

cannot be claimed after the accused has put himself on the country, 403.

the appellor, if vanquished, forfeits all his goods, 405.

the appellor is committed to gaol, *ib.*

may be declined by a person who has passed the age, 417.

oath of the, 440.

form of the oath, 441.

the king's proclamation, 443.

punishment of the appellée, if vanquished, *ib.*

of the appellor, if he retracts on the field, 445.

accessories, when liberated from obligation, 447.

not to be enforced against a defendant of 60 years of age, 451.

the king does not fight, 449.

in a case of blows and wounds, 461.

may not be settled by agreement after the wager, *ib.*

between an approver and a defendant, oath of either party, 529.

Dukes not mentioned in writ of general summons before the judges itinerant, 189, 305.

**Duket, Richard:**

at Walsingham, in Norfolk, 315.

in the county of Kent, 335.

Dumb man cannot stipulate nor promise, 117.

Dunwich, bailiffs of, 257.

Durandus, the tailor, case of, Norfolk Iter, 7 H. 3, 439.

**E.**

Earl Marshall, case of dower on his castle in Ireland, 63.

Eborum, William de, his opinion as to forfeiture of transverse inheritances in case of felony, 353.

Ecclesiasticus, the book of, quoted, 167.

Edward, laws of king, as to frankpledge, 307.

Emma, wife of William Dace, case of dower, 15 Henry 3, in the county of Cambridge, 57.

**England:**

the custom of the realm, 345, 373.

conquest of, subsequent feoffment, 35.

**Englishery:**

how presentable to the justices, 385, 391.

various customs in counties, 391.

Espousals, dower must precede, 73.

Essex, the county court of, 361.

Essoin not allowed in the fourth county court by Martin de Pateshull, 335.

Essoin de malo lecti, how dealt with by the justices itinerant, 193.

Estovers, reasonable, of a prisoner, 403.

Exceptions to a charge of homicide, 427.

Exchange of moneys made without the authority of the king, 247, 255.

Exchequer, barons of the, the amercers of counts and barons, 243.

Excommunication for contempt of court, as for a mortal sin, 331.

**Exile:**

perpetual, a punishment for greater crimes, 129, 153, 155.

to an island, 399.

Eye, the scooping out of an, 469.

**Eyesight and hearing:**

required on the part of the appellor, 435.

case in the county of Norfolk, 7 H. 3, 439.

before the Statute of Westminster the First, 438, 440.

## F.

Falsification of money, 156, 259.

Fame, common, indictment upon, 451.

Felon:

hung elsewhere than before the justices itinerant, 253.

the king may pull down the buildings and plough up the land of, 342.

his land seizable by the king for a year and a day, 343.

land not seizable by the crown, where it cannot be an escheat, 349.

his land not forfeited if he dies before conviction, 351.

may not make a donation of his land, if convicted, *ib.*

a child begotten by a, has no right of inheritance, *ib.*

dying in the lifetime of his father, does affect the inheritance of the afterborn children, 353.

a clerk, who has escaped from prison to a church, should not be protected by the court of Christianity, 359.

when captured, not to be disseised of his lands before conviction, 401.

Felony:

no one can judge but the king, 475.

not cognisable in a baron's court, 541.

Filctale, sale of, by bailiffs, 251.

Finder, the, of a dead body to be attached till the arrival of the justices, 287.

Fine can only be interpreted in the king's court, 163.

Fines with the king, made by fugitives from justice, 537.

Flanders, lands in, English heirs only owe reliefs to the king according to Flemish law, 13.

Flight from justice enhances the penalty, 331.

Flogging, punishment of, 129, 135.

Folgheres, the retainers of a householder, 307.

Forest law, offence against, not bailable, 539.

Forgery, the crime of, in certain cases, high treason, 259.

Fortune, snares of, 55.

France, king of, his subjects in England, 251.

Frankpledge:

obligation of all persons of twelve years and upwards to be in, 307.

a person cannot be dismissed from, at the arbitrary will of his surety, 309.

Franks, the law of the, as to rape of women, 485.

Free-bench of the widow in burgage tenures, 97.

Freehold:

can only be questioned under a warrant from the king, 165.

claim of, cannot be made without a writ from the king to the justices, 209.

Frenchmen, chattels of, 255.

Fridhburgh, an association of ten men in frankpledge, 307.

Friendless man, ancient term for an outlaw, 337.

Fugitive:

from justice, how to be pursued, 311.

may be waived, if a woman, 315.

may surrender himself at the fifth county court, 317.

from justice, on account of an approver, 537.

to a church must abjure the realm, 395.

allowed forty days by the assise of Clarendon, 397.

## G.

Gaine, the vicar of, 435.

Gaol, appointed for custody, not for punishment, 289.

Gascony, the king's return from, 251.

Gavel-kind, dower on lands of, 57.

Gilbert, son of Aldrendus, 451.

Gloucester, county of, custom as to out-laws, 339.  
 God, the judgment of, by water or iron, 387.  
 Godingham, Hugh de, his duel, Essex Iter, 9 H. 3, 447.  
 Gray, Randolph de, vicar of Gaine, 435.  
 Guardian :  
     his obligation to maintain the appurtenances of the estate, 11.  
     punishable for waste, *ib.*  
     in socage tenure, always the nearest relation, 21.  
 Guests, only to be received and to go away in broad daylight, 407.  
 Gust, a strange visitor on his second night, 307.

## H.

Hale's Pleas of the Crown, 151, 259.  
 Hamsokne, crime of, breaking into a house, 464.  
 Harlot, not a harlot, when ravished against her will, 485.  
 Hastings :  
     bailiffs of, 253.  
     barons of, *ib.*  
 Hely, William, son of, 435.  
 Heir :  
     legitimate, as presumed by marriage, may be disinherited by proof to the contrary, 10.  
     if he marries without the consent of the lord, the lord shall keep the estate after the heir comes of age, until he has received the value of the marriage, 27.  
     legitimate, whom marriage points out, 19.  
     of full age, may marry whom he pleases, 25.  
     in socage, not to be disinherited if he marries without the consent of his relatives, 45.  
     abduction of, punishable, *ib.*

Heir—*cont.*

    marriage of, disparagement, under fourteen years may not be forced upon them, 47.  
     under full age, liable to marry at the choice of the lord of the fief, *ib.*  
     of a traitor against the King hardly permitted to live, 261.  
 Henry 3. Itinera of the justices :  
     third year, 217.  
     fourth, 61.  
     fourth and fifth, 477.  
     fifth, 305, 335, 435.  
     sixth and seventh, 451.  
     seventh, 57, 95, 439.  
     ninth, 447.  
     ninth and tenth, 243, 407, 477, 479.  
     tenth, 449.  
     twelfth, 55, 491.  
     fourteenth, 59.  
     fifteenth, 57, 349.  
     seventeenth, 15.  
     pleas which follow the King, 18 H. 3, 83.  
     York roll, 5 H. 3, 531.  
 Hereford, county of, custom as to outlaws, 339.  
 High treason, punishment of, 211.  
 Highway of the king, 395.  
 Hinfangthefe, 293. *See* Infangthef.  
 Hiwisse, the land of, 23.  
 Hirelings, of a house, 307.  
 Hogheneyne, a strange visitor on his third night, 307.  
 Homicide :  
     crime of, accidental or intentional, 153.  
     ex eventu, 156.  
     what constitutes the crime, 275.  
     not punishable, when inevitable, 277.  
     how it is considered, when committed by chance or misfortune, *ib.*  
     when it becomes murder, 279.  
     spiritual punishment of, how removed, *ib.*  
     may be committed with the tongue, *ib.*  
     various accessories to, *ib.*  
     by neglecting to save a man from death, 281.

Homicide—*cont.*

- all persons found in a house, where a man has been slain, to be bound over till the coming of the justices itinerant, 283.
- the finders of a dead body to be attached, *ib.*, 287.
- the host of the house, where the dead man last lodged, to be attached, 285.
- relations only entitled to prosecute for, 311.
- when strangers may prosecute, *ib.*
- when an attorney may prosecute, 313.
- casual, 399.
- when it cannot be gainsayed, 407.
- appeal against an accessory, 413.
- exceptions to the charge, 427.
- various presumptions of guilt, 453.
- inquisition for, 459.
- Hour, variation in the, not a fatal exception to a writ, 429.
- Hondhabende, a thief captured with the stolen articles in his hand, 293, 510, 540.
- Householder, liable for members of his family, who are fugitives from justice, 305.
- Hucham, Robert de, case of, 15.
- Hue and cry, how raised, 237.
- Hundred, members of the, to be enrolled before the judges itinerant, 239.
- Hundred, four knights to be chosen from each, by the serjeants, and to be presented to the justices itinerant, *ib.*
- Husband has a life interest in his deceased wife's property by the law of England, 29.
- Husbands, plurality of, 67.
- Husfastene, householders, 307.
- Husting, of London, 343, 373.
- Hutfangthese, 293. See *Utfangenthesf.*
- Hythe, bailiffs of, writ to, 257.

## I.

- Idonea, her claim of dower in the county of Essex, 6 H. 3, 95.
- Idonea, wife of Nicolas Burdeth, her claim of dower in the county of Lincoln, 12 H. 3, 55.
- Imprisonment, crime of, 153.
- Indictment, by knights or by townships, 583.
- Infangenthesf, franchise of, in what it consists, 539, 541.
- Injuries: estimate of damages for personal injuries varies according to person and place, 549.
- Injury:
  - what constitutes an, 545.
  - when it brings on a pecuniary penalty, *ib.*
  - husband may sue on behalf of his wife, 547.
- Inlawry:
  - how effected by the grace of the king, 359.
  - to what things it restores a person, 367.
  - limited to the king's peace, 371.
  - a kind of new birth, 377.
  - when it is completely restorative, 369.
- Inlawed persons, a kind of new born infants, 377.
- Interdict:
  - to prevent violence, 141.
  - to recover possession, *ib.*
  - for violent dispossession, 145.
  - for stoppage of right of way, 147.
  - "quorum bonorum," *ib.*
  - "unde vi" equivalent to action for theft, 272.
- Inquest:
  - on dead bodies, how to be held, 288.
  - in respect of a person in gaol, whether he should be released on bail, 295.
  - writ to release him on twelve sureties, 297.



## Ireland :

- dower of the countess of Lincoln in, 63.
- fugitive from justice abjuring the realm, allowed to go to, 395.

## J.

## Jews :

- chattels of slain, go to the king, 245.
- may practise circumcision, 464.

## Jewess :

- marriage of a Christian with a, 489.
- a deacon, apostate in marrying, degraded and burnt, 301.

## John, king :

- articles of the barons presented to, 345.
- land held since the time of, 559.

## Judge :

- the duty of a, in the appointment of punishment, 155.
- the king, if he could suffice, and no one else, 171.
- has need of coercive power, *ib.*

## Judgment :

- what constitutes a, 165.
- its requisites according to Holy Scripture, 167.

## Jurata throughout the realm, 549.

## Jurors :

- of an iter may be charged with perjury in the next following iter of the justices, 243.
- may be separated from one another, and examined singly by the justices, 459.

## Jury :

- suspected persons removable from, 455.
- of the vill, 457.
- of four matrons in a case of rape, 491.

## Justiciaries :

- by delegation from the king, 179.
- oath of, 185.

VOL. II.

Justiciaries—*cont.*

- to judge according to the law and custom of England, 197.

## Justices :

- of the bench, 161.
- judge upon a warrant from the king, 181, 183.
- at Westminster, 187, 195, 201.
- by the side of the king, 181.
- only for certain assises, *ib.*
- associated in a case of novel disseysine, 201.
- itinerant from county to county, 161, 181.
- their oath, 183.
- itinerant, should commence their assise with the pleas of the crown, 335.

## Justitiarius capitalis, 208.

## Jus gentium, 138, 271.

## K.

Kerken, Roger de, case of, 4 & 5 H. 3, 476.

Kent, custom of, as to dower, 53.

Keys of the wife, 519.

## King, the :

- time does not run against, 139.
- his mandate to a bishop to admit a clerk, 163.
- is bound by his coronation oath to do justice, 171.
- the vicar of God on earth, 173.
- has no peer, *ib.*
- if unjust, is the minister of the devil, 175.
- so called, from ruling well, *ib.*
- cannot be a judge in his own cause, 265.
- may be injured in the persons of his family, 267.
- may not imprison a clerk, as he cannot judge him, 299.
- cannot grant a pardon with injury or damage to others, 371.

R R

**King, the—*cont.***

- may prosecute, if the duel fails by previous death of a party, 419.
- does not fight a duel, 449.
- only can prosecute in cases of non-manifest theft, 511.

**King's :**

- highway, an outlaw abjuring the realm must keep to the, 395.
- hall, a special court, 161.

**Knights :**

- inquest of twenty-four, of the county, to ascertain if the complaint should proceed, 207.
- twelve knights to be chosen from each hundred, 239.
- their oath before the justices itinerant, 241.
- need not be in frankpledge, 305.
- twelve, associated with four townships, 587.

**L.**

- Lagan, derelict things found on the sea, 273.
- Larcener may be killed in self defence, 545.
- Lassel, Theobald de, 61. *See* Theobald.
- Laughelesman, ancient term for an outlaw, 309.
- Law waged with the twelfth hand, 553.
- Laws bind the lawgiver, 175.
- Law and custom of the realm of England, 197.
- Law of England as to refusal of bail, 530.
- Law of nations :
  - things without an owner belong to the crown, 138.
  - treasure trove the property of the lord the king, 271.
- Laymen, the simplicity of, 75, 77.
- Letters of outlawry, 361.

**Lex Angliæ :**

- husband's life interest in his deceased wife's estate, 29.
- as to restitution of land escheated to the king for a year and a day, 346.

**Lex Aquilia :**

- action under it, 143.
- action on account of men slain or wounded feloniously, to whom allowed, 145.

**Lex Cornelia, de Sicariis, 339.****Lex Julia :**

- De repetundis*, 169.
- De vi publica*, 216.
- De sicariis*, 338.

**Lex Regia, de imperio, 172.****Lex terræ, 325, 330, 372.****Libels, false and infamous, punishable, 157.****Libellous verses may cause an injury, 547.****Liberties, charter of, 283.****Limbs :**

- loss of, for capital crimes, 129.
- mutilation of, a punishment for greater crimes, 155.

**Lincoln, countess of, wife of the Earl Marshall, her dower settled on the capital manor in Ireland, 63.****Lion, the subject of an action as a moveable, 135.****London :**

- custom of, as to dower, 53.
- the court of the husting, 327.
- may pronounce outlawry, 342.
- outlawry null if pronounced outside the court, 378.

**M.**

- Madman cannot stipulate nor promise, 117.
- Magnates need not be in frankpledge, 305.
- Malice, crimes of, 127.
- Manupastus, includes servitors with food and wages, and with or without liveries, 307.

**Manu duodecimâ :**

- wager of law with, 553.
- failure of any one to attend, fatal, 557.
- exception of villenage valid, *ib.*

**Maritage :**

- the lord may exact it after the heir comes of age if he marries without his consent, 27.
- in the case of sockage, according to the custom of the place, 43.
- right of, 11.

where there are several lords, it belongs to the most ancient feoffor, 11.

in the case of a military fief, it belongs to the chief lord, *ib.*

**Markets** not to be set up without leave of the king, 247.

**Marriage :**

- ought to be free, as regards the person, 27.
- of ladies who are in the donation of the king, 234.
- in the case of rape, only by permission of holy church and of the king, 485.

**Master** may flog a scholar with moderation, 277.

**Mayhem :**

- excuses a defendant from a duel, 451.
- definition of, 468.
- what constitutes, 469.

**Medleys**, cognisable in the baron's court, 539.

**Measures**, keepers of, sworn, 243.

**Mercy :**

- only to be shewn to the deserving, 177.
- of compassion distinguishable from the mercy of forgiveness, 177.

**Merton**, provisions of, in favour of a widow's dower, 83.

**Military service**, all persons having twenty pounds' worth of land, subject to, 249.

**Minor:**

- accused of felony, not compellable to answer until he is of age, 11.
- may appoint dower, 49.
- cannot be outlawed, 313, 329.

**Minor—cont.**

- cannot be punished for slaying another minor, 509.

**Mint**, a, for money not allowed without the consent of the king or his justices, 247.

**Misadventure:**

- death by, 387.
- custom in some parts varies as to the punishment, 389.
- the barber's case, 399.

**Montfort**, Simon de, 310.

**Munus**, various meanings of the word, 167.

**Murder :**

- when homicide is so called, 279.
- not in respect of persons slain or drowned in the sea, 289.
- what constitutes, 385.
- the vill liable to a fine of sixty-six marks, 387.

**Musard**, William, his land in the county of Kent seized by the king for felony, 15 H. 3, 349.

**Mutuum**, contrasted with commodatum, 109.

**N.**

**Naifty**, plea of, determinable before the justices of eyre or in the High Court of the king, 159.

**Names**, error in, when a fatal exception, 435.

**Namii**, *see* Vetitum.

**Native actions**, so called as born out of contracts, 131.

**Nations**, law of, 139, 271.

**Neale**, Richard, case of, 435.

**Norfolk**, viscount of, writ to, 257.

**Normandy**, lands in, English heirs only owe reliefs to the king according to Norman law, 13.

**Normans**, the lands of, in England, escheats of the crown, 245, 255.

**Novation**, avoids an obligation by transfer, 123.

## O.

## Oath:

- of the king at his coronation, 171.
- of the twelve knights before the justices itinerant, 239.
- clause of adjuration, 241.
- of abjuration of the realm, 395.
- form of the, in the duel, 441.
- of jurors of the vill, 457.

## Obligation:

- the mother of an action, 107.
- definition of, 109.
- may be contracted in four forms and under several vestments, *ib.*
- sometimes founded, as it were, on contract, 119.
- how got rid of, 121.
- by acceptilation, 123.
- by a novation, *ib.*
- by transfer to a minor, 125.
- invalid, if founded on deceit or fear, 121.
- penal, extinguished by death, 123.
- founded on a delict, 125.

Office of the judge distinct from a right of action, 103.

Opinion, without prejudice to a better, 77.

Ordeal of water or of fire, 397.

## Outlawry:

- no proceeding to, without a suit, 317, 327.
- flight alone not sufficient, 319, 331, 341.
- on account of flight and an indictment, 323.
- null, if made against the law of the land, 325.
- how and when to be proclaimed, 333.
- cannot be proclaimed before the fifth county court, 309.
- what forfeits it entails, 337.
- cannot be maintained for a civil offence, 331.
- forfeits all goods, 341.

Outlawry—*cont.*

- works a forfeit for all heirs, 341.
- may be proclaimed in the king's court, the county court, and the husting of London, 343.
- if a person absent on a foreign journey, remitted on his surrender to the king's prison, 363.
- pronounced in ignorance, annulled by the king with the advice of the magnates, *ib.*
- rescinded, when the person, supposed to have been slain, has returned alive, 368, 369.
- where null, 373.
- not binding upon a clerk, who must be remitted to the ordinary, 385.

## Outlaw:

- returning, before pardon, forfeits everything, 341.
- his land seized by the crown for a year and a day, 343.
- returning without warrant, 247.
- may not be killed, unless he resists capture, 383.

## Oxford, Council of:

- under archbishop Stephen Langton, A.D. 1222, 301.

Oxford, a stipulation made<sup>a</sup>at, to perform a thing in London, 115.

## P.

Paraphernal dower, not shareable, 53.

## Pardon:

- may not be granted by the king with injury to others, 371.
- of the king limited in its effect, *ib.*

## Pateshull, Martin de:

- his words in opening the assise, 235.
- his articles of inquiry as a justice itinerant, *ib.*
- his writ to the barons of Hastings, 11 H. 3, 252.

Pateshull, Martin de—*cont.*

- his iter in the county of Hertford, H. 3, 305.
- his answer to Richard Duket at Walsingham in Norfolk, 315.
- his answer to Richard Duket in the county of Kent, 315, 335.
- Worcester Iter, 5 H. 3, 335.
- diversity of opinion from Stephen de Segrave as to the ejectment of a wife from her own inheritance by reason of her husband's felony, 355.
- case of Robert Brodegh, in the county of Berks, 405.
- Worcester Iter, 5 H. 3, 435.
- last Lincoln iter, 10 H. 3, 451.
- Lincoln iter, case of Thomas de Rasne, 478.
- last Norfolk Iter, 12 H. 3, 491.
- Essex Iter, 4 H. 3, 516.
- Perambulation, used to define boundaries, 137.
- Peter of Savoy, 575. *See* Sabaudia.
- Pigo, Elias, a hireling champion, his punishment, 4 H. 3, 516.
- Pillory, punishment of the, 129, 155.
- Pincernæ, members of a household, 306.
- Pistores, part of a household, 306.
- Pleas:
  - which follow the king, case of dower, 18 H. 3, 83.
  - of the crown, their keepers in the county courts, 505.
  - keepers of, associated with the viscount under the king's writ, 535.
- Pledge, the creditor not responsible for loss by a casualty, 111.
- Pledges, wrongful release on, 251.
- Plummet-line, the test of a broken limb, 469.
- Poison, homicide by the administration of, 409.
- Pounds sterling, 477.
- Prætor, order of the, 117.
- Præcipe, in capite, 163.
- Preambulatory actions, 139.
- Pregnant woman not to be subjected to torture, 521.

- Prescription of time, how it avoids an obligation, 123.
- Presentation, pleas of last, determinable in the court of the king, 163.
- Priesthood:
  - the, distinguished from the kingdom, 170.
  - excluded from this treatise, 171.
  - ruled by ecclesiastical judges, *ib.*
- Prises of the king, 249.
- Prison:
  - a place of confinement, not of punishment, 155.
  - due committal to, 291.
  - inclusion in a, as a punishment, 545.
- Prison-breaking, punished more severely than the original offence, 303.
- Prisoners not disseisable of their property until condemned, 293.
- Probi:
  - homines, 482, 510, 564, 568.
  - homines patriæ, 281.
  - viri, 494.
- Prudhommes of the neighbourhood, 281.
- Pucelage, test of virginity, 489.
- Punchardon, William de, case of, 23.
- Punishments of crime:
  - for what object invented, 153.
  - to be mollified by the judge rather than exasperated, 155.
  - vary in consideration of the person against whom a crime is committed, 157.
  - by money penalties, *ib.*
- Purprestures on the king's lands, 245, 255.

## Q.

- Quarantaine of a widow, 81, 85.
- Quorum bonorum:
  - the action equivalent to an assise concerning the death of an ancestor, 143.

Quorum bonorum—*cont.*

when allowed against any kind of possessor, 147.

Quod vi aut clam, the interdict or action, who are entitled to it, *ib.*

## R.

Ralegh, William de :

Middlesex Iter, case of John Blunders, 79.

his judgment at Windsor, where a burglar was slain, 465.

his judgment in the county of Leicesters, in the case of Roger le Suche, 579.

Rape of a virgin :

punishable more or less gravely, 153.  
coroner's office in respect of, 289.

punished with loss of sight and of testicles, 480.

what constitutes the crime, 481.

penalty for, 483.

Rape may be condoned to the man by the woman marrying him, 493.

Rasne, Thomas de, case in Lincoln Iter, 479.

Ravishment of a virgin, finding of the country, 6 & 7 H. 3, 451.

Recognitors fraudulently removed from juries or assises by corrupt bailiffs, 249.

Recognisors :

of an assise, a writ to summon, where a cause has been transferred from Westminster to a county, 201.

where it has been transferred from one county to another, 205.

Rectors may sue in the name of their churches, 133.

Redemption money, exacted by viscounts and others, 251.

References not completed by Bracton, 438, 474.

Religious vows, persons under, may sue in the name of the corporation, 133.

Renodura, a plummet-line, 468.

Richard, king, title since the time of, 559.

Right, parity of, does not oust seysine, 35.

Robber, meaning of the term, 511.

Robbery from a person who is in custody of a thing, whether it is his property or not, 513.

Robert, the son of John, York Roll, 5 H. 3, retained in prison, although the approver was vanquished in battle, *ib.*

Robert, king, of France, his judgment at Paris, in a case of rape of a Jewess, 487.

Rod, a blow from a, does not cause infamy, but the cause wherefore, 129.

Romans, the law of the, as to rape, 485.

Rombaud, Henry :

a charge of perjury against the twelve jurors in the county of Hertford, 9 & 10 H. 3, in the case of, 243.

an exception against the indictment, 434.

indictment for murder, 9 & 10 H. 3, Hertford Iter, 435.

Romsey, bailiffs of, writ to, 257.

Rupe, Thomas de, Worcester Iter, 9 & 10 H. 3; 476.

Ryvaux, abbot of, 225.

## S.

Sabaudia, Petrus de :

his suit against the abbot of Ryvaux, 225.

his case in the Exchequer before the king's Council at Westminster, 46 H. 3; 575.

Saccabor, in pursuit of a larcener, 540.

Saccum cum brochia, 14.

Sack, with a brooch, obligation to provide, when going with the king's army into Wales, 15.

Sachibaro, an ancient German law-adviser of a vill, 511.

Sakaburth, meaning of the word, 511.

**Salt water:**

- prises of the king in, 249.
- a ship in, distinguished from a ship in fresh water as regards misadventure, 401.

Sandwich, bailiffs of, writ to, 257.

Sarah, wife of William Burnell, case of dower, 9 H. 3; 51.

Savoy, Peter of, his suit against the abbot of Ryvaux, 225.

Scothale, sale of, by bailiffs, 251.

Scotland, fugitives from justice abjuring the realm allowed to go to Scotland, 395.

Sea, purprestures on the, 245, 255.

Seal of the king, falsifying it is high treason, 267.

**Secta:**

- the suit or attendance due to a chief court, 563.

- a sufficient body of compurgators, suitors of the chief court, 565, 571.

Secular jurisdiction distinguished from ecclesiastical, 171.

Sedition of the king or of his army, 151, 259, 263.

Seditio, probably an older reading than *seductio* as applied to the king and his army, 258, 262.

**Sedition:**

- against the king, any one may accuse, except a convicted felon, 438.

- against the king must be disclosed promptly, 437.

Seductor, of the king, 261.

Segrave, Stephen de, his opinion that a wife forfeits her own inheritance by reason of her husband's felony, opposed by Martin de Pateshull, 355.

Sempronian estate, 222.

**Serf:**

- may bind his lord by a stipulation, 121.

- punishable on a different scale from a freeman, 157.

- cannot bring an accusation against his lord, except in a case of felony and sedition, 435.

**Serf—cont.**

- in what cases he may bring an action against his lord, 547.

- may be a witness against his lord in cases of sedition against the king, 549.

Serjeants of the king, 471.

Serjeanties of the king, 245.

Serjeanty, great, money test of, 15.

Serjeanty, petty:

- various species of, 13.

- money test of, 15.

Servant: avowal by the lord of the servant's act does not release the servant, whilst it charges the lord, 573.

Servientes, distinguished from servi, 306.

**Seysine:**

- not taken away from a tenant by parity of right, 35.

- of the thing stolen, essential to found the jurisdiction of the baron's court, 541.

Sherings, Ralph de, Norfolk Iter, 12 H. 3, 491.

Shillings, robbery of a hundred, 475.

Shipway, plea at, 253.

Skerda raised by a cut on the head, 468.

Sight and hearing:

- required in a witness, 311.

- abolished by Statute Westminster I., 310, 430, 440.

Sky, condition of touching it with the finger, 115.

Snares of fortune, 55.

Socke and sacke, franchise of, 291, 293, 305, 539.

Solomon, saying of, quoted, 181.

Spiritual causes, in which the secular judge has no jurisdiction, 17.

Status, personal, questions of, determinable before the justices of eyre or in the king's High Court, 159.

**Stipulation:**

- what constitutes a, 113.

- conditional, *ib.*

- useless, where impossible, 115.

- judicial, where made by order of the judge or of the prætor, *ib.*

**Stipulation—cont.**

- conventional, when cognisable in the court of the king, 117.
- ought to be in writing, *ib.*

Stolen things found in the possession of any person, how far convicting, 517.

Store-room, the wife's, 519.

**Strangers :**

- not to depart before clear day, 239.
- assise against taking coin for their entertainment, 245.
- under the protection of the justices itinerant, 247.

Stray animals belong to the king in the absence of a claimant-owner, 271.

Stripes given by a father or a master for correction permitted, if they do not exceed moderation, 157.

Sturgeon, belongs to the king, 271, 273.

Suche, Roger le, has case before William de Ralegh, 579.

**Suicide:**

- of a person accused of felony forfeits his land, except in cases of phrensy, 351.

to escape punishment distinguishable from suicide through phrensy, *ib.*

felony, when committed to escape punishment for a crime, 507.

when not felony, 509.

Suffolk, viscount of, writ to, 257.

Surety, released by the release of the principal party, 123.

Swade, Alan, allowed to decline a duel, as past the age, 451.

**T.**

The sword ought to assist the sword, said of the relations between the priesthood and the kingdom, 171, 397.

**Teeth:**

- front, assist much to victory in fighting, 469.

**Teeth—cont.**

- breakage of, when mayhem, 469.

Templars, a privileged body, 165.

Tercy, Henry de, case of, 23.

Testament, husband may leave to his wife something beyond her dower by his will, 67.

Theobald de Lassel, case of dower, 4 H. 3, in the county of Northampton, 61.

**Theft:**

- definition of, 509.

manifest, how established, 511.

where there is no seysine of any robbery, no one but the king can proceed against the party suspected, 511.

punishment should vary according to the value of the thing stolen, 517.

The Lord's Day, 246.

Titius, condition of, having been made consul, 113.

**Tithing :**

- amerciable, when a fugitive is in frankpledge, 305.

an accused party not enrolled in a, 523.

**Toll and theam :**

- franchise of, 293, 365, 539.

**Townspople :**

- four, in addition to twelve jurors, 459.
- when they may be objected to as jurors, 455.

**Township :**

- amerciable, if hue and cry is not raised, 305.

the four nearest, summoned to contribute a jury, 505.

provost of, *ib.*

associated with the twelve knights, 537.

**Torture :**

- punishment for great crime, 153.

forbidden by the digest in the case of a pregnant woman, 521.

Transportation to an island, a punishment for crime, 399.

**Treason, high :**

- any one admissible to accuse, 259.



Treason, high—*cont.*  
 accusation must be prompt, 261.  
 determinable by a duel, exceptions of  
 the accused, 263, 265.  
 when the peers of the accused are to  
 be associated with the justices, 267.  
 Treason or sedition must be denounced  
 forthwith, 437.  
 Treasure trove :  
 fraudulent concealment of, 151.  
 the concealment of it, a theft against  
 the crown, 269.  
 a gift of fortune, 271.  
 the property of the king by the law of  
 nations, *ib.*  
 Trespass of cattle, cognisable in the baron's  
 court, 541.  
 Twelve men of the county from the im-  
 mediate neighbourhood summoned,  
 505.  
 Tumbil, the punishment of the, 129, 155.  
 Tycian estate, 222.

## U.

Uncuth, a strange visitor on his first night,  
 307.  
 Unde vi, the action equivalent to an assise  
 of novel disseysine, 143.  
 Usurers, Christian, 245.  
 Utfangenthef, franchise of, in what it con-  
 sists, 539, 541.

## V.

Vavassory, privilege of a barony as to  
 dower, does not apply to a, 61.  
 Venpel, Roger de, inheritance of, 23.  
 Ver de, his case in the county of Suffolk,  
 4 & 5 H. 3., 476, 478.  
 Ver, Henry de, his case, 7 H. 3, Norfolk  
 Iter, 439.

VOL. II.

Vetitum namii, when cognisable in the  
 county court, 159, 249.  
 Vestment required for a contract, 107.  
 Vestments of compacts, six in number,  
 109.

Villatæ, townships, 505.

Vill :

four loyal men and the provost of  
 each vill, summoned to attend the  
 justices itinerant, 189.  
 jurors of the, 457.  
 amerciable, where a fugitive is out of  
 frankpledge, 302.

Villatæ :

liable, if hue and cry is not raised,  
 308.  
 when liable for a fugitive from justice,  
*ib.*  
 associated with the twelve *milites*,  
 537.

Viscounts :

of past years, summoned to appear  
 before the justices itinerant, 191.  
 two-handed, who take bribes from  
 both parties, 249.  
 may hold pleas in the king's place  
 under a deputation, 543.  
 hold views of frankpledge twice a  
 year, *ib.*

Vis major, when a person is responsible  
 for losses notwithstanding, 111.

## W.

Wager :

of battle, 439.  
 the form of, 443.

Waggonage of a villein, 243.

Waiving, in the case of a woman, takes  
 the place of outlawry, 313.

Wales :

expedition into, 15.  
 the March of, 339.

Wapentakes to be enrolled before the jus-  
 tices itinerant, 239.

S S

War, just, when in defence of one's country, 281.

Ward, a, cannot be in his turn the guardian of another, 21.

**Wardship :**

right of, according to the different character of tenements, 5, 9.

obligation of the lord in respect of the land, 11.

remedies for abuse, *ib.*

marriage, distinguishable from the custody of the lands, 13.

of socage tenants belongs to the next of kin, 17, 21.

not consistent with a right of inheritance, 17.

cannot be exercised by a minor, 21.

Warin de Monte Casino, case of, 15.

Warren, unlawful raising of a, 251.

Water-course, wrongful diversion of, by digging a foss, 229.

Water, right of drawing, from a neighbour's land, 141.

Waynage, *see* Waggonage.

Weapon, homicide by an edged, 411, 413.

Westminster, justices at, 187, 195, 201.

**Whale :**

belongs to the king, 271.

the king has the head and the queen the tail, 273.

**Widow :**

free to marry without assent of the chief lord, 19.

her claim to remain forty days in the chief messuage, 81.

how to be put into seysine of her dower, 83.

may make a will of the fruits and crops, *ib.*

her quarantaine, 85.

her share of patronage in an adowson, 87.

her assignment of dower in an advowson, 91.

her exclusion from the chief messuage, 93.

**Widow—cont.**

her dower not liable for debts of her husband, 99.

entitled to her own court, *ib.*

cannot maintain a plea of right in virtue of her dower, *ib.*

how put into seysine of her dower, if the heir is a minor, 89.

Widower entitled for his life to the inheritance of his deceased wife by the law of England, 29.

**Wreck of the sea :**

a subject of inquiry before the justices itinerant, 247.

a ship, from which no living thing has escaped, 273.

belongs to the king, as having no owner, 271.

what constitutes wreck, 273.

how a live dog may prevent it being wreck, *ib.*

**Writ :**

of general summons to attend the justices itinerant, 189.

of gaol delivery, 193.

for an assise of last presentation, 199.

for the justices to assume others to assist them, *ib.*

of exigent, 333.

to restore an outlaw's land to the chief lord, 345.

to seize a felon's land in the county of Kent, 15 H. 3, 349.

of right, in respect of the widow's dower is determinable in the heir's proper court, 99.

a little writ in certain cases, 218.

Writer, error of the, in an instrument of dower, subject to a benignant interpretation, 75.

Writing, obligation founded on, cannot be repudiated, 119.

Wrotham, William of, keeper of the king's ships, 255.

**Wife :**

the legitimate, preferred to other wives, 67.

her domestic duties, 99.

**Wife—cont.**

does not forfeit her own inheritance by reason of her husband's felony ; diversity of judicial opinions on the subject, 355.

liability of a, for the theft of her husband, 519.

her keys, of what things in her house, *ib.*

when liable as an accomplice with her husband, 521.

not obliged to obey her husband in the commission of a crime, *ib.*

William, the Seneschal, an assise of the death of an ancestor, 3 H. 3, in the county of York, 217.

Winchester, bishopric of, peculiar custom as to marriage in the case of a military fief, 21.

Wines, assise of, in cities and boroughs and vills, 245.

Wives, plurality of, 67.

**Wolf's head:**

a person out of the protection of the law, 315.

an outlaw carries it, 339.

**Woman :**

the full age of a, varies in military and socage tenure, 7.

**Woman—cont.**

in socage tenure, may consent to matrimony in her seventh year, 9.

if an heiress, cannot marry without the consent of the chief lord, 17, 23.

when otherwise, 19.

when a widow, may marry without the assent of the chief lord, *ib.*

is not in frankpledge and cannot be outlawed, 313.

may be waived, 315.

pregnant, may not be subject to torture, 521.

when she may bring a criminal charge, 495.

may accuse the slayer of her husband, *ib.*

Wounds, death after, through unwillingness to be cured, 321.

**Y.**

Yarmouth, men of, 257.

York, the county court of, 361.

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**ENGLAND.**

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# CATALOGUE.

## CONTENTS.

|                                                                                   | Page |
|-----------------------------------------------------------------------------------|------|
| CALENDARS OF STATE PAPERS, &c.                                                    | 2    |
| CHRONICLES AND MEMORIALS OF GREAT BRITAIN AND IRELAND DURING<br>THE MIDDLE AGES - | 9    |
| PUBLICATIONS OF THE RECORD COMMISSIONERS, &c.                                     | 27   |
| WORKS PUBLISHED IN PHOTOZINCOGRAPHY                                               | 31   |
| SCOTCH RECORD PUBLICATIONS                                                        | 33   |
| IRISH RECORD PUBLICATIONS                                                         | 34   |

## CALENDARS OF STATE PAPERS, &c.

[IMPERIAL 8vo., cloth. Price 15s. each Volume or Part.]

As far back as the year 1800, a Committee of the House of Commons recommended that Indexes and Calendars should be made to the Public Records, and thirty-six years afterwards another Committee of the House of Commons reiterated that recommendation in more forcible words; but it was not until the incorporation of the State Paper Office with the Public Record Office that the Master of the Rolls found himself in a position to take the necessary steps for carrying out the wishes of the House of Commons.

On 7 December 1855, he stated to the Lords of the Treasury that although "the Records, State Papers, and Documents in his charge constitute the most complete and perfect series of their kind in the civilized world," and although "they are of the greatest value in a historical and constitutional point of view, yet they are comparatively useless to the public, from the want of proper Calendars and Indexes."

Acting upon the recommendations of the Committees of the House of Commons above referred to, he suggested to the Lords of the Treasury that to effect the object he had in view it would be necessary for him to employ a few Persons fully qualified to perform the work which he contemplated.

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CALENDAR OF STATE PAPERS, DOMESTIC SERIES, OF THE REIGNS OF EDWARD VI., MARY, ELIZABETH, and JAMES I., preserved in Her Majesty's Public Record Office. *Edited by* ROBERT LEMON, Esq., F.S.A., (Vols. I. and II.), and MARY ANNE EVERETT GREEN, (Vols. III.-XII.). 1856-1872.

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This is the first volume of the modern series of Domestic Papers, commencing with the accession of George III.

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Vol. II.—Hen. VIII.—1509-1525.

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## THE CHRONICLES AND MEMORIALS OF GREAT BRITAIN AND IRELAND DURING THE MIDDLE AGES.

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[ROYAL 8vo. half-bound. *Price* 10s. each Volume or Part.]

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On 25 July 1822, the House of Commons presented an address to the Crown, stating that the editions of the works of our ancient historians were inconvenient and defective; that many of their writings still remained in manuscript, and, in some cases, in a single copy only. They added, "that an uniform and convenient edition of the whole, published under His Majesty's royal sanction, would be an undertaking honourable to His Majesty's reign, and conducive to the advancement of historical and constitutional knowledge; that the House therefore humbly besought His Majesty, that He would be graciously pleased to give such directions as His Majesty, in His wisdom, might think fit, for the publication of a complete edition of the ancient historians of this realm, and assured His Majesty that whatever expense might be necessary for this purpose would be made good."

The Master of the Rolls, being very desirous that effect should be given to the resolution of the House of Commons, submitted to Her Majesty's Treasury in 1857 a plan for the publication of the ancient chronicles and memorials of the United Kingdom, and it was adopted accordingly. In selecting these works, it was considered right, in the first instance, to give preference to those of which the manuscripts were unique, or the materials of which would help to fill up blanks in English history for which no satisfactory and authentic information hitherto existed in any accessible form. One great object the Master of the Rolls had in view was to form a *corpus historicum* within reasonable limits, and which should be as complete as possible. In a subject of so vast a range, it was important that the historical student should be able to select such volumes as conformed with his own peculiar tastes and studies, and not be put to the expense of purchasing the whole collection; an inconvenience inseparable from any other plan than that which has been in this instance adopted.

Of the Chronicles and Memorials, the following volumes have been published. They embrace the period from the earliest time of British history down to the end of the reign of Henry VII.

1. **THE CHRONICLE OF ENGLAND**, by JOHN CAPGRAVE. *Edited by* the Rev. F. C. HINGESTON, M.A., of Exeter College, Oxford. 1858.

Capgrave was prior of Lynn, in Norfolk, and provincial of the order of the Friars Hermits of England shortly before the year 1464. His Chronicle extends from the creation of the world to the year 1417. As a record of the language spoken in Norfolk (being written in English), it is of considerable value.

2. **CHRONICON MONASTERII DE ABINGDON**. Vols. I. and II. *Edited by* the Rev. JOSEPH STEVENSON, M.A., of University College, Durham, and Vicar of Leighton Buzzard. 1858.

This Chronicle traces the history of the great Benedictine monastery of Abingdon in Berkshire, from its foundation by King Ina of Wessex, to the reign of Richard I., shortly after which period the present narrative was drawn up by an inmate of the establishment. The author had access to the title-deeds of the house; and incorporates into his history various charters of the Saxon kings, of great importance as illustrating not only the history of the locality but that of the kingdom. The work is printed for the first time.

3. **LIVES OF EDWARD THE CONFESSOR**. I.—*La Estoire de Seint Aedward le Rei*. II.—*Vita Beati Edvardi Regis et Confessoris*. III.—*Vita Æduuardi Regis qui apud Westmonasterium requiescit*. *Edited by* HENRY RICHARDS LUARD, M.A., Fellow and Assistant Tutor of Trinity College, Cambridge. 1858.

The first is a poem in Norman French, containing 4,686 lines, addressed to Alianor, Queen of Henry III., and probably written in the year 1245, on the occasion of the restoration of the church of Westminster. Nothing is known of the author. The second is an anonymous poem, containing 536 lines, written between the years 1440 and 1450, by command of Henry VI., to whom it is dedicated. It does not throw any new light on the reign of Edward the Confessor, but is valuable as a specimen of the Latin poetry of the time. The third, also by an anonymous author, was apparently written for Queen Edith, between the years 1066 and 1074, during the pressure of the suffering brought on the Saxons by the Norman conquest. It notices many facts not found in other writers, and some which differ considerably from the usual accounts.

4. **MONUMENTA FRANCISCANA**; scilicet, I.—*Thomas de Eccleston de Adventu Fratrum Minorum in Angliam*. II.—*Adæ de Marisco Epistolæ*. III.—*Registrum Fratrum Minorum Londoniæ*. *Edited by* J. S. BREWER, M.A., Professor of English Literature, King's College, London. 1858.

This volume contains original materials for the history of the settlement of the order of Saint Francis in England, the letters of Adam de Marisco, and other papers connected with the foundation and diffusion of this great body. It has been the aim of the editor to collect whatever historical information could be found in this country, towards illustrating a period of the national history for which only scanty materials exist. None of these have been before printed.

5. **FASCICULI ZIZANIORUM MAGISTRI JOHANNIS WYCLIF CUM TRITICO**. Ascribed to THOMAS NETTER, of WALDEN, Provincial of the Carmelite Order in England, and Confessor to King Henry the Fifth. *Edited by* the Rev. W. W. SHIRLEY, M.A., Tutor and late Fellow of Wadham College, Oxford. 1858.

This work derives its principal value from being the only contemporaneous account of the rise of the Lollards. When written the disputes of the school-

men had been extended to the field of theology, and they appear both in the writings of Wycliff and in those of his adversaries. Wycliff's little bundles of tares are not less metaphysical than theological, and the conflict between Nominalists and Realists rages side by side with the conflict between the different interpreters of Scripture. The work gives a good idea of the controversies at the end of the 14th and the beginning of the 15th centuries.

6. **THE BUIK OF THE CRONICLIS OF SCOTLAND ; or, A Metrical Version of the History of Hector Boece** ; by WILLIAM STEWART. Vols. I., II., and III. *Edited by* W. B. TURNBULL, Esq., of Lincoln's Inn, Barrister-at-Law. 1858.

This is a metrical translation of a Latin Prose Chronicle, and was written in the first half of the 16th century. The narrative begins with the earliest legends, and ends with the death of James I. of Scotland, and the "evil ending of the traitors that slew him." Strict accuracy of statement is not to be looked for in such a work as this ; but the stories of the colonization of Spain, Ireland, and Scotland are interesting if not true ; and the chronicle is valuable as a reflection of the manners, sentiments, and character of the age in which it was composed. The peculiarities of the Scottish dialect are well illustrated in this metrical version, and the student of language will find ample materials for comparison with the English dialects of the same period, and with modern lowland Scotch.

7. **JOHANNIS CAPGRAVE LIBER DE ILLUSTRIBUS HENRICIS.** *Edited by* the Rev. F. C. HINGESTON, M.A., of Exeter College, Oxford. 1858.

This work is dedicated to Henry VI. of England, who appears to have been, in the author's estimation, the greatest of all the Henries. It is divided into three distinct parts, each having its own separate dedication. The first part relates only to the history of the Empire, and extends from the election of Henry I., the Fowler, to the end of the reign of the Emperor Henry VI. The second part is devoted to English history, and extends from the accession of Henry I. in the year 1100, to the year 1446, which was the twenty-fourth year of the reign of King Henry VI. The third part contains the lives of illustrious men who have borne the name of Henry in various parts of the world.

Capgrave was born in 1393, in the reign of Richard II., and lived during the Wars of the Roses, for the history of which period his work is of some value.

8. **HISTORIA MONASTERII S. AUGUSTINI CANTUARIENSIS**, by THOMAS OF ELMHAM, formerly Monk and Treasurer of that Foundation. *Edited by* CHARLES HARDWICK, M.A., Fellow of St. Catharine's Hall, and Christian Advocate in the University of Cambridge. 1858.

This history extends from the arrival of St. Augustine in Kent until 1191. Prefixed is a chronology as far as 1418, which shows in outline what was to have been the character of the work when completed. The only copy known is in the possession of Trinity Hall, Cambridge. The author was connected with Norfolk, and most probably with Elmham, whence he derived his name.

9. **EULOGIUM (HISTORIARUM SIVE TEMPORIS) : Chronicon ab Orbe condito usque ad Annum Domini 1366** ; a Monacho quodam Malmesbiriensi exaratum. Vols. I., II., and III. *Edited by* F. S. HAYDON, Esq., B.A. 1858-1863.

This is a Latin Chronicle extending from the Creation to the latter part of the reign of Edward III., and written by a monk of the Abbey of Malmesbury, in Wiltshire, about the year 1367. A continuation, carrying the history of England down to the year 1413, was added in the former half of the fifteenth century by an author whose name is not known. The original Chronicle is divided into five books, and contains a history of the world generally, but more especially

of England to the year 1366. The continuation extends the history down to the coronation of Henry V. The Eulogium itself is chiefly valuable as containing a history, by a contemporary, of the period between 1366 and 1366. The notices of events appear to have been written very soon after their occurrence. Among other interesting matter, the Chronicle contains a diary of the Poitiers campaign, evidently furnished by some person who accompanied the army of the Black Prince. The continuation of the Chronicle is also the work of a contemporary, and gives a very interesting account of the reigns of Richard II. and Henry IV. It is believed to be the earliest authority for the statement that the latter monarch died in the Jerusalem Chamber at Westminster.

10. MEMORIALS OF HENRY THE SEVENTH: Bernardi Andreæ Tholosatis Vita Regis Henrici Septimi; necnon alia quædam ad eundem Regem spectantia. Edited by JAMES GAIRDNER, Esq. 1858.

The contents of this volume are—(1) a life of Henry VII., by his poet laureate and historiographer, Bernard André, of Toulouse, with some compositions in verse, of which he is supposed to have been the author; (2) the journals of Roger Machado during certain embassies on which he was sent by Henry VII. to Spain and Brittany, the first of which had reference to the marriage of the King's son, Arthur, with Catharine of Arragon; (3) two curious reports by envoys sent to Spain in the year 1505 touching the succession to the Crown of Castile, and a project of marriage between Henry VII. and the Queen of Naples; and (4) an account of Philip of Castile's reception in England in 1506. Other documents of interest in connexion with the period are given in an appendix.

11. MEMORIALS OF HENRY THE FIFTH. I.—Vita Henrici Quinti, Roberto Redmanno auctore. II.—Versus Rhythmici in laudem Regis Henrici Quinti. III.—Elmhams Liber Metricus de Henrico V. Edited by CHARLES A. COLE, Esq. 1858.

This volume contains three treatises which more or less illustrate the history of the reign of Henry V., viz.: A Life by Robert Redman; a Metrical Chronicle by Thomas Elmham, prior of Lenton, a contemporary author; Versus Rhythmici, written apparently by a monk of Westminster Abbey, who was also a contemporary of Henry V. These works are printed for the first time.

12. MUNIMENTA GILDHALLÆ LONDONIENSIS; Liber Albus, Liber Custumarum, et Liber Horn, in archivis Gildhallæ asservati. Vol. I., Liber Albus. Vol. II. (in Two Parts), Liber Custumarum. Vol. III. Translation of the Anglo-Norman Passages in Liber Albus, Glossaries, Appendices, and Index. Edited by HENRY THOMAS RILEY, Esq., M.A., Barrister-at-Law. 1859–1862.

The manuscript of the *Liber Albus*, compiled by John Carpenter, Common Clerk of the City of London in the year 1419, a large folio volume, is preserved in the Record Room of the City of London. It gives an account of the laws, regulations, and institutions of that City in the twelfth, thirteenth, fourteenth, and early part of the fifteenth centuries.

The *Liber Custumarum* was compiled probably by various hands in the early part of the fourteenth century during the reign of Edward II. The manuscript, a folio volume, is also preserved in the Record Room of the City of London, though some portion in its original state, borrowed from the City in the reign of Queen Elizabeth and never returned, forms part of the Cottonian MS. Claudius D. II. in the British Museum. It also gives an account of the laws, regulations, and institutions of the City of London in the twelfth, thirteenth, and early part of the fourteenth centuries.

13. CHRONICA JOHANNIS DE OXENEDES. Edited by Sir HENRY ELLIS, K.H. 1859.

Although this Chronicle tells of the arrival of Hengist and Horsa in England in the year 449, yet it substantially begins with the reign of King Alfred, and



comes down to the year 1292, where it ends abruptly. The history is particularly valuable for notices of events in the eastern portions of the kingdom, which are not to be elsewhere obtained, and some curious facts are mentioned relative to the floods in that part of England, which are confirmed in the Friesland Chronicle of Anthony Heinrich, pastor of the Island of Mohr.

14. A COLLECTION OF POLITICAL POEMS AND SONGS RELATING TO ENGLISH HISTORY, FROM THE ACCESSION OF EDWARD III. TO THE REIGN OF HENRY VIII. Vols. I. and II. *Edited by* THOMAS WRIGHT, Esq., M.A. 1859-1861.

These Poems are perhaps the most interesting of all the historical writings of the period, though they cannot be relied on for accuracy of statement. They are various in character; some are upon religious subjects, some may be called satires, and some give no more than a court scandal; but as a whole they present a very fair picture of society, and of the relations of the different classes to one another. The period comprised is in itself interesting, and brings us, through the decline of the feudal system, to the beginning of our modern history. The songs in old English are of considerable value to the philologist.

15. The "OPUS TERTIUM," "OPUS MINUS," &c., of ROGER BACON. *Edited by* J. S. BREWER, M.A., Professor of English Literature, King's College, London. 1859.

This is the celebrated treatise—never before printed—so frequently referred to by the great philosopher in his works. It contains the fullest details we possess of the life and labours of Roger Bacon: also a fragment by the same author, supposed to be unique, the "*Compendium Studii Theologiæ*."

16. BARTHOLOMÆI DE COTTON, MONACHI NORWICENSIS, HISTORIA ANGLICANA; 449-1298: necnon ejusdem Liber de Archiepiscopis et Episcopis Angliæ. *Edited by* HENRY RICHARDS LUARD, M.A., Fellow and Assistant Tutor of Trinity College, Cambridge. 1859.

The author, a monk of Norwich, has here given us a Chronicle of England from the arrival of the Saxons in 449 to the year 1298, in or about which year it appears that he died. The latter portion of this history (the whole of the reign of Edward I. more especially) is of great value, as the writer was contemporary with the events which he records. An Appendix contains several illustrative documents connected with the previous narrative.

17. BRUT Y TYWYSOGION; or, The Chronicle of the Princes of Wales. *Edited by* the Rev. JOHN WILLIAMS AB ITHEL, M.A. 1860.

This work, also known as "The Chronicle of the Princes of Wales," has been attributed to Caradoc of Llancarvan, who flourished about the middle of the twelfth century. It is written in the ancient Welsh language, begins with the abdication and death of Caedwala at Rome, in the year 681, and continues the history down to the subjugation of Wales by Edward I., about the year 1282.

18. A COLLECTION OF ROYAL AND HISTORICAL LETTERS DURING THE REIGN OF HENRY IV. 1399-1404. *Edited by* the Rev. F. C. HINGESTON, M.A., of Exeter College, Oxford. 1860.

This volume, like all the others in the series containing a miscellaneous selection of letters, is valuable on account of the light it throws upon biographical history, and the familiar view it presents of characters, manners, and events. The period requires much elucidation; to which it will materially contribute.

19. THE REPRESSOR OF OVER MUCH BLAMING OF THE CLERGY. By REGINALD PECOCK, sometime Bishop of Chichester. Vols. I. and II. *Edited by* CHURCHILL BABINGTON, B.D., Fellow of St. John's College, Cambridge. 1860.

The "Repressor" may be considered the earliest piece of good theological disquisition of which our English prose literature can boast. The author was born

about the end of the fourteenth century, consecrated Bishop of St. Asaph in the year 1444, and translated to the see of Chichester in 1450. While Bishop of St. Asaph, he zealously defended his brother prelates from the attacks of those who censured the bishops for their neglect of duty. He maintained that it was no part of a bishop's functions to appear in the pulpit, and that his time might be more profitably spent, and his dignity better maintained, in the performance of works of a higher character. Among those who thought differently were the Lollards, and against their general doctrines the "Repressor" is directed. Pecock took up a position midway between that of the Roman Church and that of the modern Anglican Church; but his work is interesting chiefly because it gives a full account of the views of the Lollards and of the arguments by which they were supported, and because it assists us to ascertain the state of feeling which ultimately led to the Reformation. Apart from religious matters, the light thrown upon contemporaneous history is very small, but the "Repressor" has great value for the philologist, as it tells us what were the characteristics of the language in use among the cultivated Englishmen of the fifteenth century. Pecock, though an opponent of the Lollards, showed a certain spirit of toleration, for which he received, towards the end of his life, the usual mediæval reward—persecution.

20. *ANNALES CAMBRLE*, Edited by the Rev. JOHN WILLIAMS AB ITHEL, M.A. 1860.

These annals, which are in Latin, commence in the year 447, and come down to the year 1288. The earlier portion appears to be taken from an Irish Chronicle, which was also used by Tigernach, and by the compiler of the Annals of Ulster. During its first century it contains scarcely anything relating to Britain, the earliest direct concurrence with English history is relative to the mission of Augustine. Its notices throughout, though brief, are valuable. The annals were probably written at St. Davids, by Blegewryd, Archdeacon of Llandaff, the most learned man in his day in all Cymru.

21. *THE WORKS OF GIRALDUS CAMBRENSIS*. Vols. I., II., III., and IV. Edited by J. S. BREWER, M.A., Professor of English Literature, King's College, London. Vols. V., VI., and VII. Edited by the Rev. JAMES F. DIMOCK, M.A., Rector of Barnburgh, Yorkshire. 1861-1877.

These volumes contain the historical works of Gerald du Barry, who lived in the reigns of Henry II., Richard I., and John, and attempted to re-establish the independence of Wales by restoring the see of St. Davids to its ancient primacy. His works are of a very miscellaneous nature, both in prose and verse, and are remarkable chiefly for the racy and original anecdotes which they contain relating to contemporaries. He is the only Welsh writer of any importance who has contributed so much to the mediæval literature of this country, or assumed, in consequence of his nationality, so free and independent a tone. His frequent travels in Italy, in France, in Ireland, and in Wales, gave him opportunities for observation which did not generally fall to the lot of mediæval writers in the twelfth and thirteenth centuries, and of these observations Giraldus has made due use. Only extracts from these treatises have been printed before, and almost all of them are taken from unique manuscripts.

The *Topographia Hibernica* (in Vol. V.) is the result of Giraldus' two visits to Ireland. The first in the year 1183, the second in 1185-6, when he accompanied Prince John into that country. Curious as this treatise is, Mr. Dimock is of opinion that it ought not to be accepted as sober truthful history, for Giraldus himself states that truth was not his main object, and that he compiled the work for the purpose of sounding the praises of Henry the Second. Elsewhere, however, he declares that he had stated nothing in the *Topographia* of the truth of which he was not well assured, either by his own eyesight or by the testimony, with all diligence elicited, of the most trustworthy and authentic men in the country; that though he did not put just the same full faith in their reports as in what he had himself seen, yet, as they only related what they had themselves seen, he could not but believe such credible witnesses. A very interesting portion of this treatise is devoted to the animals of Ireland. It shows that he was a very accurate and acute observer, and his descriptions are given in a way that a scientific naturalist of the present day could hardly improve upon. The *Expugnatio Hibernica* was written about the year 1188 and may be regarded rather

as a great epic than a sober relation of acts occurring in his own days. No one can peruse it without coming to the conclusion that it is rather a poetical fiction than a prosaic truthful history.

Vol. VI. contains the *Itinerarium Kambriæ et Descriptio Kambriæ*: and Vol. VII., the lives of S. Remigius and S. Hugh.

22. **LETTERS AND PAPERS ILLUSTRATIVE OF THE WARS OF THE ENGLISH IN FRANCE DURING THE REIGN OF HENRY THE SIXTH, KING OF ENGLAND.** Vol. I., and Vol. II. (in Two Parts). *Edited by* the Rev. JOSEPH STEVENSON, M.A., of University College, Durham, and Vicar of Leighton Buzzard. 1861-1864.

The letters and papers contained in these volumes are derived chiefly from originals or contemporary copies extant in the Bibliothèque Impériale, and the Dépôt des Archives, in Paris. They illustrate the line of policy adopted by John Duke of Bedford and his successors during their government of Normandy, and such other provinces of France as had been acquired by Henry V. We may here trace, step by step, the gradual declension of the English power, until we are prepared to read of its final overthrow.

23. **THE ANGLO-SAXON CHRONICLE, ACCORDING TO THE SEVERAL ORIGINAL AUTHORITIES.** Vol. I., Original Texts. Vol. II., Translation. *Edited and translated by* BENJAMIN THORPE, Esq., Member of the Royal Academy of Sciences at Munich, and of the Society of Netherlandish Literature at Leyden. 1861.

This Chronicle, extending from the earliest history of Britain to the year 1154, is justly the boast of England; for no other nation can produce any history, written in its own vernacular, at all approaching it, either in antiquity, truthfulness, or extent, the historical books of the Bible alone excepted. There are at present six independent manuscripts of the Saxon Chronicle, ending in different years, and written in different parts of the country. In this edition, the text of each manuscript is printed in columns on the same page, so that the student may see at a glance the various changes which occur in orthography, whether arising from locality or age.

24. **LETTERS AND PAPERS ILLUSTRATIVE OF THE REIGNS OF RICHARD III. AND HENRY VII.** Vols. I. and II. *Edited by* JAMES GAIRDNER, Esq. 1861-1863.

The Papers are derived from MSS. in the Public Record Office, the British Museum, and other repositories. The period to which they refer is unusually destitute of chronicles and other sources of historical information, so that the light obtained from these documents is of special importance. The principal contents of the volumes are some diplomatic Papers of Richard III.; correspondence between Henry VII. and Ferdinand and Isabella of Spain; documents relating to Edmund de la Pole, Earl of Suffolk; and a portion of the correspondence of James IV. of Scotland.

25. **LETTERS OF BISHOP GROSSETESTE, illustrative of the Social Condition of his Time.** *Edited by* HENRY RICHARDS LUARD, M.A., Fellow and Assistant Tutor of Trinity College, Cambridge. 1861.

The Letters of Robert Grosseteste (131 in number) are here collected from various sources, and a large portion of them is printed for the first time. They range in date from about 1210 to 1253, and relate to various matters connected not only with the political history of England during the reign of Henry III., but with its ecclesiastical condition. They refer especially to the diocese of Lincoln, of which Grosseteste was bishop.

26. **DESCRIPTIVE CATALOGUE OF MANUSCRIPTS RELATING TO THE HISTORY OF GREAT BRITAIN AND IRELAND.** Vol. I. (in Two Parts); Anterior to the Norman Invasion. Vol. II.; 1066-1200. Vol. III.; 1200-1327. *By* Sir THOMAS DUFFUS HARDY, D.C.L., Deputy Keeper of the Public Records. 1862-1871.

The object of this work is to publish notices of all known sources of British history, both printed and unprinted, in one continued sequence. The materials, when historical (as distinguished from biographical), are arranged under the year in which the latest event is recorded in the chronicle or history, and not

under the period in which its author, real or supposed, flourished. Biographies are enumerated under the year in which the person commemorated died, and not under the year in which the life was written. This arrangement has two advantages; the materials for any given period may be seen at a glance; and if the reader knows the time when an author wrote, and the number of years that had elapsed between the date of the events and the time the writer flourished, he will generally be enabled to form a fair estimate of the comparative value of the narrative itself. A brief analysis of each work has been added when deserving it, in which the original portions are distinguished from those which are mere compilations. When possible, the sources are indicated from which such compilations have been derived. A biographical sketch of the author of each piece has been added, and a brief notice has also been given of such British authors as have written on historical subjects.

27. **ROYAL AND OTHER HISTORICAL LETTERS ILLUSTRATIVE OF THE REIGN OF HENRY III.** Vol. I., 1216-1235. Vol. II., 1236-1272. *Selected and edited by* the Rev. W. W. SHIRLEY, D.D., Regius Professor in Ecclesiastical History, and Canon of Christ Church, Oxford. 1862-1866.

The letters contained in these volumes are derived chiefly from the ancient correspondence formerly in the Tower of London, and now in the Public Record Office. They illustrate the political history of England during the growth of its liberties, and throw considerable light upon the personal history of Simon de Montfort. The affairs of France form the subject of many of them, especially in regard to the province of Gascony. The entire collection consists of nearly 700 documents, the greater portion of which is printed for the first time.

28. **CHRONICA MONASTERII S. ALBANI.**—1. THOMÆ WALSINGHAM HISTORIA ANGLICANA; Vol. I., 1272-1381: Vol. II., 1381-1422. 2. WILLELMI RISHANGER CHRONICA ET ANNALES, 1259-1307. 3. JOHANNIS DE TROKELowe ET HENRICI DE BLANEFORDE CHRONICA ET ANNALES, 1259-1296; 1307-1324; 1392-1406. 4. GESTA ABBATUM MONASTERII S. ALBANI, A THOMA WALSINGHAM, REGNANTE RICARDO SECUNDO, EJUSDEM ECCLESIE PRÆCENTORE, COMPILATA; Vol. I., 793-1290: Vol. II., 1290-1349: Vol. III., 1349-1411. 5. JOHANNIS AMUNDESHAM, MONACHI MONASTERII S. ALBANI, UT VIDETUR, ANNALES; Vols. I. and II. 6. REGISTRA QUORUNDAM ABBATUM MONASTERII S. ALBANI, QUI SÆCULO XV<sup>mo</sup> FLORUERE; Vol. I., REGISTRUM ABBATIS JOHANNIS WHETHAMSTEDE, ABBATIS MONASTERII SANCTI ALBANI, ITERUM SUSCEPTÆ; ROBERTO BLAKENEY, CAPELLANO, QUONDAM ADSRIPTUM: Vol. II., REGISTRA JOHANNIS WHETHAMSTEDE, WILLELMI ALBON, ET WILLELMI WALINGFORDE, ABBATUM MONASTERII SANCTI ALBANI, CUM APPENDICE, CONTINENTE QUASDAM EPISTOLAS, A JOHANNES WHETHAMSTEDE CONSCRIPTAS. 7. YPODIGMA NEUSTRIÆ, A THOMA WALSINGHAM, QUONDAM MONACHO MONASTERII S. ALBANI, CONSCRIPTUM. *Edited by* HENRY THOMAS RILEY, Esq., M.A., Cambridge and Oxford; and of the Inner Temple, Barrister-at-Law. 1863-1876.

In the first two volumes is a History of England, from the death of Henry III. to the death of Henry V., by Thomas Walsingham, Precentor of St. Albans, from MS. VII. in the Arundel Collection in the College of Arms, London, a manuscript of the fifteenth century, collated with MS. 13 E. IX. in the King's Library in the British Museum, and MS. VII. in the Parker Collection of Manuscripts at Corpus Christi College, Cambridge.

In the third volume is a Chronicle of English History, attributed to William Rishanger, who lived in the reign of Edward I., from the Cotton. MS. Faustina B. IX. in the British Museum, collated with MS. 14 C. VII. (fols. 219-231) in the King's Library, British Museum, and the Cotton MS. Claudius E. III., fols. 306-331: an account of transactions attending the award of the kingdom of Scotland to John Balliol, 1291-1292, from MS. Cotton. Claudius D. VI., also attributed to William Rishanger, but on no sufficient ground: a short Chronicle of English History, 1292 to 1300,

by an unknown hand, from MS. Cotton. Claudius D. VI.: a short Chronicle, Willelmi Rishanger Gesta Edwardi Primi, Regis Angliæ, from MS. 14 C. I. in the Royal Library, and MS. Cotton. Claudius D. VI., with *Annales Regum Angliæ*, probably by the same hand: and fragments of three Chronicles of English History, 1285 to 1307.

In the fourth volume is a Chronicle of English History, 1259 to 1296, from MS. Cotton. Claudius D. VI.: Annals of Edward II., 1307 to 1323, by John de Trokelowe, a monk of St. Albans, and a continuation of Trokelowe's Annals, 1323, 1324, by Henry de Blaneфорde, both from MS. Cotton. Claudius D. VI.: a full Chronicle of English History, 1392 to 1406, from MS. VII. in the Library of Corpus Christi College, Cambridge; and an account of the Benefactors of St. Albans, written in the early part of the fifteenth century, from MS. VI. in the same Library.

The fifth, sixth, and seventh volumes contain a history of the Abbots of St. Albans, 793 to 1411, mainly compiled by Thomas Walsingham, from MS. Cotton. Claudius E. IV., in the British Museum: with a Continuation, from the closing pages of Parker MS. VII., in the Library of Corpus Christi College, Cambridge.

The eighth and ninth volumes, in continuation of the Annals, contain a Chronicle, probably by John Amundesham, a monk of St. Albans.

The tenth and eleventh volumes relate especially to the acts and proceedings of Abbots Whethamstede, Albon, and Wallingford, and may be considered as a memorial of the chief historical and domestic events during those periods.

The twelfth volume contains a compendious History of England to the reign of Henry V., and of Normandy in early times, also by Thomas Walsingham, and dedicated to Henry V. The compiler has often substituted other authorities in place of those consulted in the preparation of his larger work.

29. *CHRONICON ABBATILÆ EVESHAMENSIS, AUCTORIBUS DOMINICO PRIORE EVESHAMILÆ ET THOMA DE MARLEBERGE ABBATE, A FUNDATIONE AD ANNUM 1213, UNA CUM CONTINUATIONE AD ANNUM 1418.* Edited by the Rev. W. D. MACRAY, M.A., Bodleian Library, Oxford. 1863.

The Chronicle of Evesham illustrates the history of that important monastery from its foundation by Egwin, about 690, to the year 1418. Its chief feature is an autobiography, which makes us acquainted with the inner daily life of a great abbey, such as but rarely has been recorded. Interspersed are many notices of general, personal, and local history which will be read with much interest. This work exists in a single MS., and is for the first time printed.

30. *RICARDI DE CIRENCESTRIA SPECULUM HISTORIALE DE GESTIS REGUM ANGLIÆ.* Vol. I., 447-871. Vol. II., 872-1066. Edited by JOHN E. B. MAYOR, M.A., Fellow of St. John's College, Cambridge. 1863-1869.

The compiler, Richard of Cirencester, was a monk of Westminster, 1355-1400. In 1391 he obtained a licence to make a pilgrimage to Rome. His history, in four books, extends from 447 to 1066. He announces his intention of continuing it, but there is no evidence that he completed any more. This chronicle gives many charters in favour of Westminster Abbey, and a very full account of the lives and miracles of the saints, especially of Edward the Confessor, whose reign occupies the fourth book. A treatise on the Coronation, by William of Sudbury, a monk of Westminster, fills book iii. c. 3. It was on this author that C. J. Bertram fathered his forgery, *De Situ Britannia*, in 1747.

31. *YEAR BOOKS OF THE REIGN OF EDWARD THE FIRST.* Years 20-21, 21-22, 30-31, and 32-33. Edited and translated by ALFRED JOHN HORWOOD, Esq., of the Middle Temple, Barrister-at-Law. 1863-1873.

The volumes known as the "Year Books" contain reports in Norman-French of cases argued and decided in the Courts of Common Law. They may be considered to a great extent as the "lex non scripta" of England, and have been held in the highest veneration by the ancient sages of the law, and were received by them as the repositories of the first recorded judgments and dicta of the great legal luminaries of past ages. They are also worthy of the attention of the general reader on account of the historical information and the notices of public and private persons which they contain, as well as the light which they throw on ancient manners and customs.

32. **NARRATIVES OF THE EXPULSION OF THE ENGLISH FROM NORMANDY, 1449-1450.**—Robertus Blondelli de Reductione Normanniæ: Le Recouvrement de Normandie, par Berry, Hérault du Roy: Conférences between the Ambassadors of France and England. *Edited, from MSS. in the Imperial Library at Paris, by the Rev. JOSEPH STEVENSON, M.A., of University College, Durham.* 1863.

This volume contains the narrative of an eye-witness who details with considerable power and minuteness the circumstances which attended the final expulsion of the English from Normandy in the year 1450. The history commences with the infringement of the truce by the capture of Fougères, and ends with the battle of Formigny and the embarkation of the Duke of Somerset. The whole period embraced is less than two years.

33. **HISTORIA ET CARTULARIUM MONASTERII S. PETRI GLOUCESTRÆ.** Vols. I., II., and III. *Edited by W. H. HART, Esq., F.S.A., Membre correspondant de la Société des Antiquaires de Normandie.* 1863-1867.

This work consists of two parts, the History and the Cartulary of the Monastery of St. Peter, Gloucester. The history furnishes an account of the monastery from its foundation, in the year 681, to the early part of the reign of Richard II., together with a calendar of donations and benefactions. It treats principally of the affairs of the monastery, but occasionally matters of general history are introduced. Its authorship has generally been assigned to Walter Froucester, the twentieth abbot, but without any foundation.

34. **ALEXANDRI NECKAM DE NATURIS RERUM LIBRI DUO; with NECKAM'S POEM, DE LAUDIBUS DIVINÆ SAPIENTIÆ.** *Edited by THOMAS WRIGHT, Esq., M.A.* 1863.

Neckam was a man who devoted himself to science, such as it was in the twelfth century. In the "De Naturis Rerum" are to be found what may be called the rudiments of many sciences mixed up with much error and ignorance. Neckam was not thought infallible, even by his contemporaries, for Roger Bacon remarks of him, "this Alexander in many things wrote what was true and useful; but he neither can nor ought by just title to be reckoned among authorities." Neckam, however, had sufficient independence of thought to differ from some of the schoolmen who in his time considered themselves the only judges of literature. He had his own views in morals, and in giving us a glimpse of them, as well as of his other opinions, he throws much light upon the manners, customs, and general tone of thought prevalent in the twelfth century. The poem entitled "De Laudibus Divinæ Sapientiæ" appears to be a metrical paraphrase or abridgment of the "De Naturis Rerum." It is written in the elegiac metre; and though there are many lines which violate classical rules, it is, as a whole above the ordinary standard of mediæval Latin.

35. **LEECHDOMS, WORTCUNNING, AND STARCRAFT OF EARLY ENGLAND; being a Collection of Documents illustrating the History of Science in this Country before the Norman Conquest.** Vols. I., II., and III. *Collected and edited by the Rev. T. OSWALD COCKAYNE, M.A., of St. John's College, Cambridge.* 1864-1866.

This work illustrates not only the history of science, but the history of superstition. In addition to the information bearing directly upon the medical skill and medical faith of the times, there are many passages which incidentally throw light upon the general mode of life and ordinary diet. The volumes are interesting not only in their scientific, but also in their social aspect. The manuscripts from which they have been printed are valuable to the Anglo-Saxon scholar for the illustrations they afford of Anglo-Saxon orthography.

36. **ANNALES MONASTICI.** Vol. I.:—Annales de Margan, 1066-1232; Annales de Theokesberia, 1066-1263; Annales de Burton, 1004-1263. Vol. II.:—Annales Monasterii de Wintonia, 519-1277; Annales Monasterii de Waverleia, 1-1291. Vol. III.:—Annales Prioratus de Dunstaplia, 1-1297; Annales Monasterii de Bermundesia, 1042-

1432. Vol. IV. :—*Annales Monasterii de Oseneia, 1016–1347*; *Chronicon vulgo dictum Chronicon Thomæ Wykes, 1066–1289*; *Annales Prioratus de Wigornia, 1–1377*. Vol. V. :—*Index and Glossary*. Edited by HENRY RICHARDS LUARD, M.A., Fellow and Assistant Tutor of Trinity College, and Registry of the University, Cambridge. 1864–1869.

The present collection of Monastic Annals embraces all the more important chronicles compiled in religious houses in England during the thirteenth century. These distinct works are ten in number. The extreme period which they embrace ranges from the year 1 to 1432, although they refer more especially to the reigns of John, Henry III., and Edward I. Some of these narratives have already appeared in print, but others are printed for the first time.

37. *MAGNA VITA S. HUGONIS EPISCOPI LINCOLNIENSIS*. From Manuscripts in the Bodleian Library, Oxford, and the Imperial Library, Paris. Edited by the Rev. JAMES F. DIMOCK, M.A., Rector of Barnburgh, Yorkshire. 1864.

This work contains a number of very curious and interesting incidents, and being the work of a contemporary, is very valuable, not only as a truthful biography of a celebrated ecclesiastic, but as the work of a man, who, from personal knowledge, gives notices of passing events, as well as of individuals who were then taking active part in public affairs. The author, in all probability, was Adam Abbot of Evesham. He was domestic chaplain and private confessor of Bishop Hugh, and in these capacities was admitted to the closest intimacy. Bishop Hugh was Prior of Witham for 11 years before he became Bishop of Lincoln. His consecration took place on the 21st September 1186; he died on the 16th of November 1200; and was canonized in 1220.

38. *CHRONICLES AND MEMORIALS OF THE REIGN OF RICHARD THE FIRST*. Vol. I. :—*ITINERARIUM PEREGRINORUM ET GESTA REGIS RICARDI*. Vol. II. :—*EPISTOLÆ CANTUARIENSES*; the Letters of the Prior and Convent of Christ Church, Canterbury; 1187 to 1199. Edited by WILLIAM STUBBS, M.A., Vicar of Navestock, Essex, and Lambeth Librarian. 1864–1865.

The authorship of the Chronicle in Vol. I., hitherto ascribed to Geoffrey Vinesauf, is now more correctly ascribed to Richard, Canon of the Holy Trinity of London. The narrative extends from 1187 to 1199; but its chief interest consists in the minute and authentic narrative which it furnishes of the exploits of Richard I., from his departure from England in December 1189 to his death in 1199. The author states in his prologue that he was an eye-witness of much that he records; and various incidental circumstances which occur in the course of the narrative confirm this assertion.

The letters in Vol. II., written between 1187 and 1199, are of value as furnishing authentic materials for the history of the ecclesiastical condition of England during the reign of Richard I. They had their origin in a dispute which arose from the attempts of Baldwin and Hubert, archbishops of Canterbury, to found a college of secular canons, a project which gave great umbrage to the monks of Canterbury, who saw in it a design to supplant them in their function of metropolitan chapter. These letters are printed, for the first time, from a MS. belonging to the archiepiscopal library at Lambeth.

39. *RECUEIL DES CRONIKES ET ANCIENNES ISTORIES DE LA GRANT BRETAGNE A PRESENT NOMME ENGLETERRE*, par JEHAN DE WAURIN. Vol. I. Albina to 688. Vol. II., 1399–1422. Edited by WILLIAM HARDY, Esq., F.S.A. 1864–1868.
40. *A COLLECTION OF THE CHRONICLES AND ANCIENT HISTORIES OF GREAT BRITAIN, NOW CALLED ENGLAND*, by JOHN DE WAURIN. Albina to 688. (Translation of the preceding Vol. I.) Edited and translated by WILLIAM HARDY, Esq., F.S.A. 1864.

This curious chronicle extends from the fabulous period of history down to the return of Edward IV. to England in the year 1471, after the second deposition of

Henry VI. The manuscript from which the text of the work is taken is preserved in the Imperial Library at Paris, and is believed to be the only complete and nearly contemporary copy in existence. The work, as originally bound, was comprised in six volumes, since rebound in morocco in 12 volumes, folio maximo, vellum, and is illustrated with exquisite miniatures, vignettes, and initial letters. It was written towards the end of the fifteenth century, having been expressly executed for Louis de Bruges, Seigneur de la Gruthuyse and Earl of Winchester, from whose cabinet it passed into the library of Louis XII. at Blois.

41. **POLYCHRONICON RANULPHI HIGDEN**, with Trevisa's Translation. Vols. I. and II. *Edited by* CHURCHILL BABINGTON, B.D., Senior Fellow of St. John's College, Cambridge. Vols. III., IV., V., and VI. *Edited by* the Rev. JOSEPH RAWSON LUMBY, B.D., Vicar of St. Edward's, Fellow of St. Catharine's College, and late Fellow of Magdalene College, Cambridge. 1865-1876.

This is one of the many mediæval chronicles which assume the character of a history of the world. It begins with the creation, and is brought down to the author's own time, the reign of Edward III. Prefixed to the historical portion, is a chapter devoted to geography, in which is given a description of every known land. To say that the Polychronicon was written in the fourteenth century is to say that it is not free from inaccuracies. It has, however, a value apart from its intrinsic merits. It enables us to form a very fair estimate of the knowledge of history and geography which well-informed readers of the fourteenth and fifteenth centuries possessed, for it was then the standard work on general history.

The two English translations, which are printed with the original Latin, afford interesting illustrations of the gradual change of our language, for one was made in the fourteenth century, the other in the fifteenth. The differences between Trevisa's version and that of the unknown writer are often considerable.

42. **LE LIVRE DE REIS DE BRITTANIE E LE LIVRE DE REIS DE ENGLETERE**. *Edited by* JOHN GLOVER, M.A., Vicar of Brading, Isle of Wight, formerly Librarian of Trinity College, Cambridge. 1865.

These two treatises, though they cannot rank as independent narratives, are nevertheless valuable as careful abstracts of previous historians, especially "Le Livre de Reis de Engleterre." Some various readings are given which are interesting to the philologist as instances of semi-Saxonized French.

It is supposed that Peter of Ickham must have been the author, but no certain conclusion on that point has been arrived at.

43. **CHRONICA MONASTERII DE MELSA, AB ANNO 1150 USQUE AD ANNUM 1406**. Vols. I., II., and III. *Edited by* EDWARD AUGUSTUS BOND, Esq., Assistant Keeper of the Manuscripts, and Egerton Librarian, British Museum. 1866-1868.

The Abbey of Meaux was a Cistercian house, and the work of its abbot is both curious and valuable. It is a faithful and often minute record of the establishment of a religious community, of its progress in forming an ample revenue, of its struggles to maintain its acquisitions, and of its relations to the governing institutions of the country. In addition to the private affairs of the monastery, some light is thrown upon the public events of the time, which are however kept distinct, and appear at the end of the history of each abbot's administration. The text has been printed from what is said to be the autograph of the original compiler, Thomas de Burton, the nineteenth abbot.

44. **MATTHEI PARISIENSIS HISTORIA ANGLORUM, SIVE, UT VULGO DICITUR, HISTORIA MINOR**. Vols. I., II., and III. 1067-1253. *Edited by* Sir FREDERIC MADDEN, K.H., Keeper of the Department of Manuscripts, British Museum. 1866-1869.

The exact date at which this work was written is, according to the chronicler, 1250. The history is of considerable value as an illustration of the period during which the author lived, and contains a good summary of the events which followed the Conquest. This minor chronicle is, however, based on another work (also



written by Matthew Paris) giving fuller details, which has been called the "Historia Major." The chronicle here published, nevertheless, gives some information not to be found in the greater history.

45. **LIBER MONASTERII DE HYDA: A CHRONICLE AND CHARTULARY OF HYDE ABBEY, WINCHESTER, 455-1023.** *Edited, from a Manuscript in the Library of the Earl of Macclesfield, by EDWARD EDWARDS, Esq.* 1866.

The "Book of Hyde" is a compilation from much earlier sources which are usually indicated with considerable care and precision. In many cases, however, the Hyde chronicler appears to correct, to qualify, or to amplify—either from tradition or from sources of information not now discoverable—the statements, which, in substance, he adopts. He also mentions, and frequently quotes from writers whose works are either entirely lost or at present known only by fragments.

There is to be found, in the "Book of Hyde," much information relating to the reign of King Alfred which is not known to exist elsewhere. The volume contains some curious specimens of Anglo-Saxon and Mediæval English.

46. **CHRONICON SCOTORUM: A CHRONICLE OF IRISH AFFAIRS, from the EARLIEST TIMES to 1135; with a SUPPLEMENT, containing the Events from 1141 to 1150** *Edited, with a Translation, by WILLIAM MAUNSELL HENNESSY, Esq., M.R.I.A.* 1866.

There is, in this volume, a legendary account of the peopling of Ireland and of the adventures which befell the various heroes who are said to have been connected with Irish history. The details are, however, very meagre both for this period and for the time when history becomes more authentic. The plan adopted in the chronicle gives the appearance of an accuracy to which the earlier portions of the work cannot have any claim. The succession of events is marked, year by year, from A.M. 1599 to A.D. 1150. The principal events narrated in the later portion of the work are, the invasions of foreigners, and the wars of the Irish among themselves. The text has been printed from a MS. preserved in the library of Trinity College, Dublin, written partly in Latin, partly in Irish.

47. **THE CHRONICLE OF PIERRE DE LANGTOFT, IN FRENCH VERSE, FROM THE EARLIEST PERIOD TO THE DEATH OF EDWARD I. Vols. I. and II.** *Edited by THOMAS WRIGHT, Esq., M.A.* 1866-1868.

It is probable that Pierre de Langtoft was a canon of Bridlington, in Yorkshire, and that he lived in the reign of Edward I., and during a portion of the reign of Edward II. This chronicle is divided into three parts; in the first is an abridgment of Geoffrey of Monmouth's "Historia Britonum," in the second, a history of the Anglo-Saxon and Norman kings, down to the death of Henry III., and in the third a history of the reign of Edward I. The principal object of the work was apparently to show the justice of Edward's Scottish wars. The language is singularly corrupt, and a curious specimen of the French of Yorkshire.

48. **THE WAR OF THE GAEDHIL WITH THE GAILL, OR, THE INVASIONS OF IRELAND BY THE DANES AND OTHER NORSEMEN.** *Edited, with a Translation, by JAMES HENTHORN TODD, D.D., Senior Fellow of Trinity College, and Regius Professor of Hebrew in the University, Dublin.* 1867.

The work in its present form, in the editor's opinion, is a comparatively modern version of an undoubtedly ancient original. That it was compiled from contemporary materials has been proved by curious incidental evidence. It is stated in the account given of the battle of Clontarf that the full tide in Dublin Bay on the day of the battle (23 April 1014) coincided with sunrise; and that the returning tide in the evening aided considerably in the defeat of the Danes. The fact has been verified by astronomical calculations, and the inference is that the author of the chronicle, if not himself an eye-witness, must have derived his information from those who were eye-witnesses. The contents of the work are sufficiently described in its title. The story is told after the manner of the Scandinavian Sagas, with poems and fragments of poems introduced into the prose narrative.

49. **GESTA REGIS HENRICI SECUNDI BENEDICTI ABBATIS. THE CHRONICLE OF THE REIGNS OF HENRY II. AND RICHARD I., 1169-1192; known**

x x 2

under the name of **BENEDICT OF PETERBOROUGH**. Vols. I. and II. *Edited by WILLIAM STUBBS, M.A.,* Regius Professor of Modern History, Oxford, and Lambeth Librarian. 1867.

This chronicle of the reigns of Henry II. and Richard I., known commonly under the name of Benedict of Peterborough, is one of the best existing specimens of a class of historical compositions of the first importance to the student.

50. **MUNIMENTA ACADEMICA, OR, DOCUMENTS ILLUSTRATIVE OF ACADEMICAL LIFE AND STUDIES AT OXFORD** (in Two Parts). *Edited by the Rev. HENRY ANSTEY, M.A.,* Vicar of St. Wendron, Cornwall, and lately Vice-Principal of St. Mary Hall, Oxford. 1868.

This work will supply materials for a History of Academical Life and Studies in the University of Oxford during the 13th, 14th, and 15th centuries.

51. **CHRONICA MAGISTRI ROGERI DE HOVEDENE**. Vols. I., II., III., and IV. *Edited by WILLIAM STUBBS, M.A.,* Regius Professor of Modern History, and Fellow of Oriel College, Oxford. 1868–1871.

This work has long been justly celebrated, but not thoroughly understood until Mr. Stubbs' edition. The earlier portion, extending from 732 to 1148, appears to be a copy of a compilation made in Northumbria about 1161, to which Hoveden added little. From 1148 to 1169—a very valuable portion of this work—the matter is derived from another source, to which Hoveden appears to have supplied little, and not always judiciously. From 1170 to 1192 is the portion which corresponds with the Chronicle known under the name of Benedict of Peterborough (see No. 49); but it is not a copy, being sometimes an abridgment, at others a paraphrase; occasionally the two works entirely agree; showing that both writers had access to the same materials, but dealt with them differently. From 1192 to 1201 may be said to be wholly Hoveden's work: it is extremely valuable, and an authority of the first importance.

52. **WILLELMI MALMESBIRIENSIS MONACHI DE GESTIS PONTIFICUM ANGLO-RUM LIBRI QUINQUE**. *Edited, from William of Malmesbury's Autograph MS., by N. E. S. A. HAMILTON, Esq.,* of the Department of Manuscripts, British Museum. 1870.

William of Malmesbury's "Gesta Pontificum" is the principal foundation of English Ecclesiastical Biography, down to the year 1122. The manuscript which has been followed in this Edition is supposed by Mr. Hamilton to be the author's autograph, containing his latest additions and amendments.

53. **HISTORIC AND MUNICIPAL DOCUMENTS OF IRELAND, FROM THE ARCHIVES OF THE CITY OF DUBLIN, &c. 1172–1320**. *Edited by JOHN T. GILBERT, Esq.,* F.S.A., Secretary of the Public Record Office of Ireland. 1870.

A collection of original documents, elucidating mainly the history and condition of the municipal, middle, and trading classes under or in relation with the rule of England in Ireland,—a subject hitherto in almost total obscurity. Extending over the first hundred and fifty years of the Anglo-Norman settlement, the series includes charters, municipal laws and regulations, rolls of names of citizens and members of merchant-guilds, lists of commodities with their rates, correspondence, illustrations of relations between ecclesiastics and laity; together with many documents exhibiting the state of Ireland during the presence there of the Scots under Robert and Edward Bruce.

54. **THE ANNALS OF LOCH CÉ. A CHRONICLE OF IRISH AFFAIRS, FROM 1014 to 1590**. Vols. I. and II. *Edited, with a Translation, by WILLIAM MAUNSELL HENNESSY, Esq.,* M.R.I.A. 1871.

The original of this chronicle has passed under various names. The title of "Annals of Loch Cé" was given to it by Professor O'Curry, on the ground that it was transcribed for Brian Mac Dermot, an Irish chieftain, who resided on the island in Loch Cé, in the county of Roscommon. It adds much to the materials for the civil and ecclesiastical history of Ireland; and contains many curious references to English and foreign affairs, not noticed in any other chronicle.

55. **MONUMENTA JURIDICA. THE BLACK BOOK OF THE ADMIRALTY, WITH APPENDICES. Vols. I., II., III., and IV. Edited by SIR TRAVERS TWISS, Q.C., D.C.L. 1871-1876.**

This book contains the ancient ordinances and laws relating to the navy, and was probably compiled for the use of the Lord High Admiral of England. Selden calls it the "jewel of the Admiralty Records." Prynne ascribes to the Black Book the same authority in the Admiralty as the Black and Red Books have in the Court of Exchequer, and most English writers on maritime law recognize its importance.

56. **MEMORIALS OF THE REIGN OF HENRY VI. :—OFFICIAL CORRESPONDENCE OF THOMAS BEKYNTON, SECRETARY TO HENRY VI., AND BISHOP OF BATH AND WELLS. Edited, from a MS. in the Archiepiscopal Library at Lambeth, with an Appendix of Illustrative Documents, by the Rev. GEORGE WILLIAMS, B.D., Vicar of Ringwood, late Fellow of King's College, Cambridge. Vols. I. and II. 1872.**

These curious volumes are of a miscellaneous character, and were probably compiled under the immediate direction of Bekynton before he had attained to the Episcopate. They contain many of the Bishop's own letters, and several written by him in the King's name; also letters to himself while Royal Secretary, and others addressed to the King. This work elucidates some points in the history of the nation during the first half of the fifteenth century.

57. **MATTHÆI PARISIENSIS, MONACHI SANCTI ALBANI, CHRONICA MAJORA. Vol. I. The Creation to A.D. 1066. Vol. II. A.D. 1067 to A.D. 1216. Vol. III. A.D. 1216 to A.D. 1239. Vol. IV. A.D. 1240 to A.D. 1247. Edited by HENRY RICHARDS LUARD, D.D., Fellow of Trinity College, Registry of the University, and Vicar of Great St. Mary's, Cambridge. 1872-1877.**

This work contains the "Chronica Majora" of Matthew Paris, one of the most valuable and frequently consulted of the ancient English Chronicles. It is published from its commencement, for the first time. The editions by Archbishop Parker, and William Wats, severally begin at the Norman Conquest.

58. **MEMORIALE FRATRIS WALTERI DE COVENTRIA,—THE HISTORICAL COLLECTIONS OF WALTER OF COVENTRY. Vols. I. and II. Edited, from the MS. in the Library of Corpus Christi College, Cambridge, by WILLIAM STUBBS, M.A., Regius Professor of Modern History, and Fellow of Oriel College, Oxford. 1872-1873.**

This work, now printed in full for the first time, has long been a *desideratum* by Historical Scholars. The first portion, however, is not of much importance, being only a compilation from earlier writers. The part relating to the first quarter of the thirteenth century is the most valuable and interesting.

59. **THE ANGLO-LATIN SATIRICAL POETS AND EPIGRAMMATISTS OF THE TWELFTH CENTURY. Vols. I. and II. Now first collected and edited by THOMAS WRIGHT, Esq., M.A., Corresponding Member of the National Institute of France (Académie des Inscriptions et Belles-Lettres). 1872.**

The Poems contained in these volumes have long been known and appreciated as the best satires of the age in which their authors flourished, and were deservedly popular during the 13th and 14th centuries.

60. **MATERIALS FOR A HISTORY OF THE REIGN OF HENRY VII., FROM ORIGINAL DOCUMENTS PRESERVED IN THE PUBLIC RECORD OFFICE. Vols. I. and II. Edited by the Rev. WILLIAM CAMPBELL, M.A., one of Her Majesty's Inspectors of Schools. 1873-1877.**

These volumes are valuable as illustrating the acts and proceedings of Henry VII. on ascending the throne, and shadow out the policy he afterwards adopted.

61. **HISTORICAL PAPERS AND LETTERS FROM THE NORTHERN REGISTERS.** *Edited by* JAMES RAINE, M.A., Canon of York, and Secretary of the Surtees Society. 1873.

The documents in this volume illustrate, for the most part, the general history of the north of England, particularly in its relation to Scotland.

62. **REGISTRUM PALATINUM DUNELMENSE.** **THE REGISTER OF RICHARD DE KELLAWE, LORD PALATINE AND BISHOP OF DURHAM; 1311-1316.** Vols. I., II., III., and IV. *Edited by* Sir THOMAS DUFFUS HARDY, D.C.L., Deputy Keeper of the Public Records. 1873-1878.

Bishop Kellawe's Register contains the proceedings of his prelaty, both lay and ecclesiastical, and is the earliest Register of the Palatinate of Durham.

63. **MEMORIALS OF SAINT DUNSTAN ARCHBISHOP OF CANTERBURY.** *Edited, from various MSS., by* WILLIAM STUBBS, M.A., Regius Professor of Modern History, and Fellow of Oriel College, Oxford. 1874.

This volume contains several lives of Archbishop Dunstan, one of the most celebrated Primates of Canterbury. They open various points of Historical and Literary interest, without which our knowledge of the period would be more incomplete than it is at present.

64. **CHRONICON ANGLIÆ, AB ANNO DOMINI 1328 USQUE AD ANNUM 1388, AUCTORE MONACHO QUODAM SANCTI ALBANI.** *Edited by* EDWARD MAUNDE THOMPSON, Esq., Barrister-at-Law, and Assistant-Keeper of the Manuscripts in the British Museum. 1874.

This chronicle gives a circumstantial history of the close of the reign of Edward III. which has hitherto been considered lost.

65. **THÓMAS SAGA ERKIBYSKUPS.** **A LIFE OF ARCHBISHOP THOMAS BECKET, IN ICELANDIC.** Vol. I. *Edited, with English Translation, Notes, and Glossary, by* M. EIRÍKR MAGNÚSSON, Sub-Librarian of the University Library, Cambridge. 1875.

This work is derived from the Life of Becket written by Benedict of Peterborough, and apparently supplies the missing portions in Benedict's biography.

66. **RADULPHI DE COGGESHALL CHRONICON ANGLICANUM.** *Edited by* the REV. JOSEPH STEVENSON, M.A. 1875.

This volume contains the "Chronicon Anglicanum," by Ralph of Coggeshall, the "Libellus de Expugnatione Terræ Sanctæ per Saladinum," usually ascribed to the same author, and other pieces of an interesting character.

67. **MATERIALS FOR THE HISTORY OF THOMAS BECKET, ARCHBISHOP OF CANTERBURY.** Vols. I., II., and III. *Edited by* the Rev. JAMES CRAIGIE ROBERTSON, M.A., Canon of Canterbury. 1875-1877.

This Publication will comprise all contemporary materials for the history of Archbishop Thomas Becket. The first volume contains the life of that celebrated man, and the miracles after his death, by William, a monk of Canterbury. The second, the life by Benedict of Peterborough; John of Salisbury; Alan of Tewkesbury; and Edward Grim. The third, the life by William Fitzstephen; and Herbert of Bosham.

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This is a new edition of Bracton's celebrated work, collated with MSS. in the British Museum; the Libraries of Lincoln's Inn, the Middle Temple, and Gray's Inn; the Bodleian Library, Oxford; the Bibliothèque Nationale, Paris; &c. &c.

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